UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

NO. 7492

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,
PLAINTIFFS IN ERROR,

vs.

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

IN ERROR TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the September Term, 1927, of said Court, before the Honorable Kimbrough Stone and the Honorable Arba S. Van Valkenburgh, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

Be it remembered that heretofore, to-wit: on the seventeenth day of June, A. D. 1926, a transcript of record, pursuant to a writ of error directed to the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Allie E. Lewis, et al., were Plaintiffs in Error and the United States of America was Defendant in Error, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE JOHN C. POLLOCK, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS, PRESIDING IN THE FOLLOWING ENTITLED CAUSE, BY ASSIGNMENT:

UNITED STATES OF AMERICA, PLAINTIFF,

Criminal vs. No. 9346

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,

DEFENDANTS.

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,

PLAINTIFFS IN ERROR,

vs.

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

In the District Court of the United States of America for the Eastern District of Oklahoma.—Of the Special March Term, at Muskogee, in the Year 1925.

Indictment.

Violation National Banking Laws.—Sec. 5209. (False Entries.)

Eastern District of Oklahoma—ss.

The grand jurors of the United States of America, empaneled and sworn in the District Court of the United States for the Eastern District of Oklahoma, at the Special March Term of said court, at Muskogee, in the year 1925, and inquiring for said district, upon their oath present, that Allie E. Lewis and William Lloyd Lewis, each late of the City of Tulsa, Oklahoma, were, on March 20, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court,

then and there respectively directors and officers, to-wit, the said Allie E. Lewis was the president and the said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and established and then and there existing and in operation and doing business as, and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District Number 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said association by virtue of their official relation thereto as such president and vice-president, respectively, thereof, and as such officers of said association possessing a power of control, direction and management over the moneys, funds, credits, books, reports, records and statements of said association; by virtue of their said official relationship to said association, and their respective power of control, direction and management over the moneys, funds, credits, books, reports, records and statements thereof, unlawfully, feloniously, knowingly, wrongfully and wilfully, with intent on their part, and on the part of each of them, to injure and defraud said banking association, and divers other persons, companies and corporations to the grand jurors unknown, and to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, did make and cause to be made, in a certain record book of said banking association then and there used by said association in the regular course of its banking business, for the purpose of recording therein the minutes of the meetings of its Board of Directors, and the minutes of the meetings of its stockholders, and then and there known and designated as, to-wit, Minute Book No. 2, on, to-wit, the aforesaid 20th day of March, 1923, a certain false entry on that certain page of said minute book numbered 23, which said entry then and there was, and is, false, and which said entry they, the said Allie E. Lewis and William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said association, at a meeting of said Board of Directors held on, to-wit, March 20, 1923, approved a report of the Discount Committee of said association on all loans made

by said association subsequent to February 27th, 1923, and prior to said 20th day of March, 1923, being loans numbered 17086 to 18050, inclusive, in the books and records of said bank; whereas, in truth and in fact no such report was approved by said Board of Directors, who did not then or at any time prior or subsequent thereto, at any meeting of the Board of Directors of said association, approve a report of such Discount Committee as to the said loans so numbered 17086 to 18050, inclusive, as aforesaid, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on April 24, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as, and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books, records, statements and reports of said banking association, unlawfully, fraudulently, feloniously, knowingly and wilfully, with intent on their part and on the part of each of them to injure and defraud said banking association and divers other persons, companies and corporation[] to the grand jurors unknown, and with intent to deceive the other officers of said banking association, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said

banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 25, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 24th day of April, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Discount Committee of said banking association, at a meeting of the Board of Directors of said banking association then and there held, submitted a report on all loans made by said banking association since the last meeting of said Board of Directors prior to said 24th day of April, 1923, being loans designated upon the books and records of said bank by the numbers 18051 to 19056, inclusive, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, no report was then and there submitted by said Discount Committee of said banking association on the said loans, so numbered 18051 to 19056, inclusive, as aforesaid, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on May 22, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to wit, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking asso-

citation, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books, records, statements and reports of said banking association, unlawfully, fraudulently, feloniously, knowingly and wilfully, with intent on their part and on the part of each of them to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said banking association, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 27, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 22nd day of May, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Discount Committee of said banking association, at a meeting of the Board of Directors of said banking association then and there held, submitted a report on all loans made by said banking association since the last meeting of said Board of Directors prior to said 22nd day of May, 1923, being loans designated upon the books and records of said bank by the numbers 19057 to 20070, inclusive, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, no report was then and there submitted by said Discount Committee of said banking association on the said loans, so numbered 19057 to 20070, inclusive, as aforesaid, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on June 19, 1923, at said City of Tulsa,

in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by the Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books records, statements and reports of said banking association, unlawfully, fraudulently, feloniously, knowingly and wilfully, with intent on their part and on the part of each of them to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said banking association, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 29, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 19th day of June, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Discount Committee of said banking association, at a meeting of the Board of Directors of said banking association then and there held, submitted a report on all loans made by said banking association since the last meeting of said Board of Directors prior to said 19th day of June, 1923, being loans designated upon

the books and records of said bank by the numbers 20071 to 20253, inclusive, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, no report was then and there submitted by said Discount Committee of said banking association on the said loans, so numbered 20071 to 20253, inclusive, as aforesaid, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and William Lloyd Lewis, on July 13, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books, records, statements and reports of said banking association, unlawfully, fraudulently, feloniously, knowingly and wilfully, with intent on their part and on the part of each of them to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said banking association, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 33, which said book

was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 13th day of July, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit: an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Discount Committee of said banking association, at a meeting of the Board of Directors of said banking association then and there held, submitted a report on all loans made by said banking association since the last meeting of said Board of Directors prior to said 13th day of July, 1923, being loans designated upon the books and records of said bank by the numbers 20254 to 20362, inclusive, whereas, in truth and in fact, as said Allie E. Lewis and said William, Lloyd Lewis then and there each well knew, no report was then and there submitted by said Discount Committee of said banking association on the said loans, so numbered 20254 to 20362, inclusive, as aforesaid, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on September 24, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and man-

agement which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books, records, statements and reports of said banking association, unlawfully, fraudulently, feloniously, knowingly and wilfully, with intent on their part and on the part of each of them to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with the intent to deceive the other officers of said banking association, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 43, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 24th day of September, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Discount Committee of said banking association, at a meeting of the Board of Directors of said banking association then and there held, submitted a report on all loans made by said banking association since last meeting of said Board of Directors prior to said 24th day of September, 1923, being loans designated upon the books and records of said bank by the numbers 20363 to 20614, inclusive, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, no report was then and there submitted by said Discount Committee of said banking association on the said loans, so numbered 20363 to 20614, inclusive, as aforesaid, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Seventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on April 24, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said

Allie E. Lewis was the president and said William Lloyd Lewis was the vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis, then and there had over the moneys, funds, credits, books, statements, records and reports of said banking association, unlawfully, fraudulently, knowingly, feloniously, wrongfully and wilfully, with intent then and there on their part and on the part of each of them, to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 25, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 24th day of April, 1923, did make and cause to be made a certain entry, which said entry was and is false, and which said entry they, said Allie E. Lewis, and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said banking association, at a meeting of said Board of Directors held on, to-wit, April 24, 1923, then and there approved a report of the discount committee of said banking association on all loans made by said banking association subsequent to the last prior meeting of said Board of Directors, said loans being those designated upon the books and records of said banking

association by the numbers 18051 to 19056, inclusive; whereas, in truth and in fact the said Board of Directors did not then and there approve any report of the discount committee of said banking association on said loans, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Eighth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on May 22, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was the vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and William Lloyd Lewis, then and there had over the moneys, funds, credits, books, statements, records and reports of said banking association, unlawfully, fraudulently, knowingly, feloniously, wrongfully and wilfully, with intent then and there on their part and on the part of each of them, to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 27, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of

record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 22nd day of May, 1923, did then and there make and cause to be made a certain entry, which said entry was and is false, and which said entry they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said banking association, at a meeting of said Board of Directors, held on, to-wit, May 22, 1923, then and there approve a report of the discount committee of said banking association on all loans made by said banking association subsequent to the last prior meeting of said Board of Directors, said loans being those designated upon the books and records of said banking association by the numbers 19057 and 20070, inclusive; whereas, in truth and in fact the said Board of Directors did not then and there approve any report of the discount committee of said banking association on said loans, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Ninth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on June 19, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was the vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis, then and there had over the moneys, funds, credits, books, state-

ments, records and reports of said banking association, unlawfully, fraudulently, knowingly, feloniously, wrongfully and wilfully, with intent then and there on their part and on the part of each of them, to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 29, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors and the minutes of meetings of its stockholders, on the aforesaid 19th day of June, 1923, did then and there make and cause to be made a certain entry, which said entry was and is false, and which said entry they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said banking association, at a meeting of said Board of Directors held on, to-wit, June 19, 1923, then and there approved a report of the discount committee of said banking association on all loans made by said banking association subsequent to the last prior meeting of said Board of Directors, said loans being those designated upon the books and records of said banking association by the numbers 20071 to 20253, inclusive; whereas, in truth and in fact the said Board of Directors did not then and there approve any report of the discount committee of said banking association on said loans, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Tenth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on July 13, 1923, at said City of Tulsa, in said District, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was the vice-president, of a certain national banking association

theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis, then and there had over the moneys, funds, credits, books, statements, records and reports of said banking association, unlawfully, fraudulently, knowingly, feloniously, wrongfully and wilfully, with intent then and there on their part and on the part of each of them, to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with the intent to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 33, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings of its stockholders, on the aforesaid 13th day of July, 1923, did then and there make and cause to be made a certain entry, which said entry was and is false, and which said entry they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said banking association, at a meeting of said Board of Directors held on, to-wit, July 13, 1923, then and there approved a report of the discount committee of said banking association on all loans made by said banking association subsequent to the last prior meeting of said Board of Directors, said loans being those designated upon the books and records of said banking association by the numbers 20254 to 20362, inclusive; whereas, in truth and in fact the said Board of Directors did not then and there ap-

prove any report of the discount committee of said banking association on said loans, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Eleventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on September 24, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court, were each then and there directors and officers, to-wit, said Allie E. Lewis was the president and said William Lloyd Lewis was the vice-president, of a certain national banking association theretofore organized and then and there in operation and doing business, as aforesaid, as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by the Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said banking association, by virtue of their official relation thereto as its president and vice-president, respectively, as aforesaid, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there had over the moneys, funds, credits, books, statements, records and reports of said banking association, unlawfully, fraudulently, knowingly, feloniously, wrongfully and willfully, with intent then and there on their part and on the part of each of them, to injure and defraud said banking association and divers other persons, companies and corporations to the grand jurors unknown, and with intent to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, in a certain book then and there belonging to and used by said banking association in the regular course of its banking business, and on that certain page of said book designated by the number 43, which said book was then and there known as Minute Book No. 2, and was then and there in use by said association as a book of record of the minutes of meetings of its Board of Directors, and the minutes of meetings

of its stockholders, on the aforesaid 24th day of September, 1923 did then and there make and cause to be made a certain entry which said entry was and is false, and which said entry they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said banking association, at a meeting of said Board of Directors held on, to-wit, September 24, 1923, then and there approved a report of the discount committee of said banking association on all loans made by said banking association subsequent to the last prior meeting of said Board of Directors, said loans being those designated upon the books and records of said banking association by the numbers 20363 to 20614, inclusive; whereas, in truth and in fact the said Board of Directors did not then and there approve any report of the discount committee of said banking association on said loans, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twelfth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on August 23, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to wit, that he, said Allie E. Lewis, was the president and he, said William Lloyd Lewis was a vice-president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, and the other officers of said banking association, unlawfully and feloniously

ly did knowingly and fraudulently make and cause to be made in a certain record book of said association, on that certain page thereof numbered 41, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said banking association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, wholly false, to-wit, an entry which did then and there falsely purport to show and which did then and there in substance and effect falsely declare that, on said 23rd day of August, 1923, one John T. Kramer, who was then and there a member of the Board of Directors of said banking association, at a meeting of the Board of Directors of said banking association then and there held, made a motion to re-elect one E. A. Ross as a member of the Board of Directors of said banking association, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, no motion of any kind or nature whatsoever was then and there made by said John T. Kramer, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on August 23, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, Allie E. Lewis was the president and he, said William Lloyd Lewis was a vice-president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and

examiners appointed under the laws of the United States to examine the affairs of said banking association, and the other officers of said banking association, unlawfully and feloniously did knowingly and fraudulently make and cause to be made in a certain record book of said association, on that certain page thereof numbered 41, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said banking association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, wholly false, to-wit, an entry which did then and there falsely purport to show and which did then and there in substance and effect falsely declare that, on said 23rd day of August, 1923, one John T. Kramer, who was then and there a member of the Board of Directors of said banking association, was then and there present at a meeting of the Board of Directors of said banking association then and there held, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, said John T. Kramer was not then and there present at a meeting of the Board of Directors of said banking association, contrary to the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Fourteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on August 23, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he said Allie E. Lewis was the president and he, said William Lloyd Lewis was a vice-president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part and on the part of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the

Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, and the other officers of said banking association, unlawfully and feloniously did knowingly and fraudulently make and cause to be made in a certain record book of said association, on that certain page thereof numbered 41, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said banking association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, wholly false, to-wit, an entry which did then and there falsely purport to show and which did then and there in substance and effect falsely declare that on, to-wit, said 23rd day of August, 1923, one E. A. Ross was, at a meeting of the Board of Directors of said banking association then and there held, re-elected as a member of the Board of Directors of said banking association, whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, said E. A. Ross was not then and there so re-elected as a member of said Board of Directors of said banking association, contrary to the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Fifteenth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on February 27, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on

their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully, and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 21, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 27th day of February, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa, then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Sixteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on March 20, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said

banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 23, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 20th day of March, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Seventeenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on April 24, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Fed-

eral Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully, and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 25, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 24th day of April, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Eighteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and William Lloyd Lewis, on May 22, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president and he, said William Lloyd Lewis, as a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The

Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 27, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 22nd day of May, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa, then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Nineteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on June 19th, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a

member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then [] there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 29, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, on entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 19th day of June, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twentieth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on July 13, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in op-

eration and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 33, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 13th day of July, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty-first Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on August 11, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Ok-

lahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 39, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 11th day of August, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty-second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on August 23, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was

the president and *be*, said William Lloyd Lewis, was vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Federal Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 41, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that there then and there was, on said 23rd day of August, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa, then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa, then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Twenty-third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on September 24, 1923, at the City of

Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there in operation and doing business and existing under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; [] and that said banking association, to-wit, the president and vice-president thereof, respectively, as aforesaid, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully, and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof designated by the number 43, which said book was then and there known as Minute Book No. 2, of said banking association, and then and there used thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and the minutes of meetings of its stockholders, a certain entry which was and is false and which they, said Allie E. Lewis and said William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and *and* effect falsely declare that there then and there was, on said 24th day of September, 1923, a meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, whereas, in truth and in fact said entry was wholly false in that there was no meeting of the Board of Directors of said The Liberty National Bank of Tulsa then and there held, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on March 20, 1923, at the City of Tul-

sa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president, and he said William Lloyd Lewis was a vice-president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 23, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, as *as* a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, an entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said association, known as the expense book of said association, then and there had been and then and there was examined by the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and in fact, said entry was wholly false, as said Allie E. Lewis and said Willliam Lloyd Lewis each then and there well knew, in that said Board of Directors of said Banking Association did not then and there examine the said expense book of said association, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Twenty-fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on April 24, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president, and he, said William Lloyd Lewis was a vice-president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 25, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, an entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said association, known as the expense book of said association, then and there had been and then and there was examined by the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and in fact, said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Board of Directors of said banking association did not then and there examine the said expense book of said association, contrary to the form of the statute of the United

States in such case made and provided and against the peace and dignity of the United States.

Twenty-sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on May 22, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by the Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of [ ] United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 27, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, an entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said association, known as the expense book of said association, then and there had been and then and there was examined by the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and in fact, said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said

Board of Directors of said banking association did not then and there examine the said expense book of said association, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty-seventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on June 19, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice-president, of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 29, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, and entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said association, known as the expense book of said association, then and there had been and then and there was approved by the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and

in fact said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Board of Directors of said banking association did not then and there approve the said expense book of the said association, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty-eighth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on July 13, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president, and he, said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 33, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, an entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said association, known as the expense book of said association, then and there had been and then and there was approved by

the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and in fact said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Board of Directors of said Banking Association did not then and there approve the said expense book of said association; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Twenty-ninth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that said Allie E. Lewis and said William Lloyd Lewis, on September 24, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and he, said William Lloyd Lewis, was a vice president, of said The Liberty National Bank of Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established, and then and there in operation and doing business, under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; and that said Allie E. Lewis and said William Lloyd Lewis, so being such officers of said banking association, then and there, with intent on their part, and on the part of each of them, then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and to deceive the other officers of said banking association, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, wilfully and feloniously did knowingly and fraudulently make and cause to be made, in a certain record book of said banking association, on that certain page thereof numbered 43, which said record book was known and designated as Minute Book No. 2, and then and there was in use by said association as a book of record of the minutes of the meetings of the Board of Directors of said association, and as a book of record of the minutes of the meetings of the stockholders of said association, a certain entry, which then and there was, as said Allie E. Lewis and said William Lloyd Lewis then and there well knew, wholly false, to-wit, an entry which then and there falsely purported to show and which did then and there in substance and effect falsely declare that the record of current expenses of said

association, known as the expense book of said association, then and there had been and then and there was approved by the Board of Directors of said association at a meeting of said Board of Directors of said association then and there held, whereas, in truth and in fact said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Board of Directors of said banking association did not then and there approve the said expense book of said association, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirtieth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports and statements of said association, and the keeping and making thereof, by virtue of their official positions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there

in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid, then and there entered and caused to be entered, on said page so designated by the number 17, as aforesaid, the words, "The Stockholders of The Liberty National Bank of Tulsa, Oklahoma, assembled in the City of Tulsa, State of Oklahoma, on the 9th day of January, 1923," which said entry then and there falsely purported to show and did in substance and effect falsely declare that the stockholders of said The Liberty National Bank of Tulsa, then and there, on, to-wit, said 9th day of January, 1923, assembled and then and there held an annual stockholders' meeting as stockholders of said association, whereas said entry was wholly false in that, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, the stockholders of said association did not then and there assemble and hold an annual stockholders' meeting as stockholders of said banking association; contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-first Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof, by virtue of their official po-

sitions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid, then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name of E. A. Ross, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said E. A. Ross, who was then and there a stockholder of said banking association, was then and there, on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said E. A. Ross was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis, was the president, and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the

Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof, by virtue of their official positions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid, then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name John T. Kramer, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said John T. Kramer, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said John T. Kramer was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said

William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized, and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning National Banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power to control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof by virtue of their official positions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name H. N. Greis, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said H. N. Greis, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew,

in that said H. N. Greis was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof, by virtue of their official positions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid, then and there entered and

caused to be entered on said page numbered 17, of said Minute Book No. 2, the name E. F. Black, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said E. F. Black, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said E. F. Black was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof, by virtue of their official positions as such president and vice-president thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that cer-

tain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and said William Lloyd Lewis with the intent aforesaid, then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name A. E. Duran, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said A. E. Duran, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said A. E. Duran was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning national banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by the Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports and statements of said association, and the keeping and making thereof, by virtue of their official positions as such president and vice-pres-

ident thereof, then and there, on said 9th day of January, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to the false, to-wit, said Allie E. Lewis and said William Lloyd Lewis, with the intent aforesaid, then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name of Simon W. Knoten, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said Simon W. Knoten, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Simon W. Knoten was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such made and provided, and against the peace and dignity of the United States.

Thirty-seventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on January ninth, 1923, at the City of Tulsa, aforesaid, in said Eastern District of Oklahoma, were directors and officers, to-wit, that he, said Allie E. Lewis was the president and said William Lloyd Lewis was a vice-president of said The Liberty National Bank of Tulsa, Tulsa, Oklahoma, which then and there was a national banking association theretofore organized and established and then and there existing and in operation and doing business under and by virtue of the laws of the United States concerning National Banks, and which then and there was a member bank of the Federal Reserve Bank of Kansas City,

Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10, and that said Allie E. Lewis and said William Lloyd Lewis, so being officers of said banking association, to-wit, the president and a vice-president thereof, respectively, as aforesaid, and having then and there a power of control, direction and management over the books, records, reports, and statements of said association, and the keeping and making thereof, by virtue of their official positions [] such president and vice-president thereof, then and there on said 9th day of Jandary, 1923, with intent on their part and on the part of each of them then and there to injure and defraud said banking association, and to deceive the other officers of said banking association, and to deceive the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, unlawfully, feloniously, knowingly, wilfully and wrongfully did make and cause to be made, in a certain record book of said bank, on that certain page thereof designated by the number 17, which said record book was then and there known as Minute Book No. 2, of said banking association, and then and there in use thereby as a record book for the recording of the minutes of the meetings of its Board of Directors, and for the recording of the minutes of the meetings of its stockholders, a certain false entry which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, said Allie E. Lewis and William Lloyd Lewis, with the intent aforesaid, then and there entered and caused to be entered on said page numbered 17, of said Minute Book No. 2, the name Nora I. Suppes, which said entry then and there falsely purported to show, and did in substance and effect falsely declare that said Nora I. Suppes, who was then and there a stockholder of said banking association, was then and there on said 9th day of January, 1923, present at a meeting of the stockholders of said association then and there held, whereas said entry was wholly false, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, in that said Nora I. Suppes was not present at a meeting of the stockholders of said association then and there held, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-eighth Count.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on April 11, 1923, at said City of Tul-

sa, in said Eastern District of Oklahoma, and within the jurisdiction of this court, were then and there directors and officers, to-wit, said Allie E. Lewis was then and there the president and said William Lloyd Lewis was then and there a vice-president of a certain national banking association theretofore organized and established and then and there in operation and doing business as aforesaid as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said bank by virtue of their official relation thereto as such president and vice-president, respectively, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis, then and there respectively had over the moneys, funds, credits, books, records, reports and statements of said banking association, unlawfully, feloniously, knowingly, fraudulently, wrongfully and wilfully, with intent to deceive the Comptroller of the Currency of the United States and the agents and examiners appointed and to be appointed under the laws of the United States to examine the affairs of said bank, in a certain report on said 11th day of April, 1923, then and there made and submitted to the Comptroller of the Currency of the United States under and by virtue of the laws of the United States concerning national banks and known as the report of condition of said The Liberty National Bank of Tulsa at the close of business on April 3, 1923, did make and cause to be made on said 11th day of April, 1923, a certain false entry which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that, at the close of business of said bank on April 3rd, 1923, the total aggregate sum of the loans and discounts of said banking association then and there was the sum of $1,996,531.70; whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said entry was wholly false in that the said sum of $1,996,531.70, so falsely entered as aforesaid, included as a part thereof the sum of to-wit, $29,300.00 as the purported then indebtedness of one Roy A. Koons upon a certain promissory note, made payable to said banking association, in the sum of $29,500.00, dated December 22, 1922, signed R. A. Koons, and designated by the

number 15099, whereas, in truth and in fact said Roy A. Koons had theretofore, to-wit, on February 15, 1923, paid the sum of, to-wit, $800.00 upon said note, and that on, to-wit, March 23, 1923, paid the sum of, to-wit, $824.00 upon said note, thereby reducing the amount then and there owed by said Roy A. Koons, upon said note, to the sum of, to-wit, $27,676.00; and whereas, in truth and in fact, as said Allie E. Lewis, and said William Lloyd Lewis each then and there well knew, the said sum of $1,996,531.70, so falsely entered as aforesaid, included as a part thereof the sum of $20,800.00 as the purported then indebtedness of one Albert M. Ballard upon a certain promissory note, made payable to said banking association in the sum of $21,750.00, dated December 29th, 1922, signed A. M. Ballard and designated by the number 16018, whereas, in truth and in fact said Albert M. Ballard had theretofore, to-wit, on February 15, 1923, paid the sum of, to-wit, $3,950.00 upon said note, and had on, to-wit, March 21, 1923, paid the sum of, to-wit, $1,525.00 upon said note, thereby reducing the amount owed by said Albert M. Ballard upon said note to the sum of $16,275.00; and whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said sum of $1,996,531.70, so falsely entered as aforesaid, included as a part thereof the purported then indebtedness of one Mason Kittess upon a certain purported promissory note, drawn payable to said banking association in the sum of $15,000.00 dated December 18, 1922, signed Mason Kittess, and designated by the number 15077, whereas, in truth and in fact said purported promissory note did not represent any valid and existing indebtedness upon the part of said Mason Kittess to the said banking association, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Thirty-ninth Count.

And the grand jurors, aforesaid, upon their oath aforesaid, do further present that said Allie E. Lewis and said William Lloyd Lewis, on July 6, 1923, at said City of Tulsa, in said Eastern District of Oklahoma, and within the jurisdiction of this court, were then and there directors and officers, to-wit, said Allie E. Lewis was then and there the president and said William Lloyd Lewis was then and there a vice-president of a certain national banking association theretofore organized and established and then and there in operation and doing business as aforesaid as and under the name The Lib-

erty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said bank by virtue of their official relation thereto as such president and vice-president, respectively, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there respectively had over the moneys, funds, credits, books, records, reports and statements of said banking association, unlawfully, feloniously, knowingly, fraudulently and wilfully, with intent to deceive the Comptroller of the Currency of the United States and the agents and examiners appointed and to be appointed under the laws of the United States to examine the affairs of said bank, in a certain report on said 6th day of July, 1923, then and there made and submitted to the Comptroller of the Currency of the United States under and by virtue of the laws of the United States concerning national banks and known as the report of condition of said The Liberty National Bank of Tulsa at the close of business on June 30, 1923, did make and cause to be made on said 6th day of July, 1923, a certain false entry which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that, at the close of business of said bank on June 30, 1923, the total aggregate sum of the loans and discounts of said banking association then and there was the sum of $2,074,216.12; whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said entry was wholly false in that the said sum of $2,074,216.12 so falsely entered as aforesaid, included as a part thereof the sum of, to-wit, $29,300.00 as the purported then indebtedness of one Roy A. Koons upon a certain promissory note, made payable to said banking association, in the sum of $29,500.00, dated December 22, 1922, signed R. A. Koons, and designated by the number 15099, whereas, in truth and in fact said Roy A. Koons had theretofore, to-wit, on February 16, 1923, paid the sum of, to-wit, $800.00 upon said note, and had on, to-wit, March 23, 1923, paid the sum of, to-wit, $824.00 upon said note, and had on, to-wit, June 4, 1923, paid the sum of, to-wit, $400.00 upon said note, and had on, to-wit, June 19, 1923, paid the sum of, to-wit, $504.00

upon said note, thereby reducing the amount owed by said Roy A. Koons, upon said note, to the sum of $26,772.00; and whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, the said sum of $2,074,216.12, so falsely entered as aforesaid, included as a part thereof the sum of $20,800.00 as the purported then indebtedness of one Albert M. Ballard upon a certain promissory note, made payable to said banking association in the sum of $21,750.00, dated December 29th, 1922, signed A. M. Ballard and designated by the number 16018, whereas, in truth and in fact said Albert M. Ballard had theretofore, to-wit, on February 15, 1923, paid the sum of, to-wit, $3,950.00 upon said note, and had on, to-wit, March 21, 1923, paid the sum of, to-wit, $1525.00 upon said note, and had on, to-wit, June 12, 1923, paid the sum of, to-wit, $50.00 upon said note, thereby reducing the amount owed by said Albert M. Ballard upon said note to the sum of, to-wit, $16,225.00; and whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said sum of $2,074,216.12, so falsely entered as aforesaid, included as a part thereof the purported then indebtedness of one Mason Kittess upon a certain purported promissory note, drawn payable to said banking association in the sum of $15,000.00, dated December 18, 1922, signed Mason Kittess, and designated by the number 15077, whereas, in truth and in fact said purported promissory note did not represent any valid and existing indebtedness upon the part of said Mason Kittess to said banking association, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

Fortieth Count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present that said Allie E. Lewis and the said William Lloyd Lewis, on September 29, 1923, at said City of Tulsa, in said Eastern District of Oklahoma, and within the jurisdiction of this court, were then and there directors and officers, to-wit, said Allie E. Lewis was then and there the president and said William Lloyd Lewis was then and there a vice-president of a certain National Banking Association organized and established and then and there in operation and doing business as aforesaid as and under the name The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the

Federal Reserve Bank of Kansas City, Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District No. 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said bank by virtue of their official relation thereto as such president and vice-president, respectively, and by virtue of the power of control, direction and management which they, said Allie E. Lewis and said William Lloyd Lewis then and there respectively had over the moneys, funds, credits, books, records, reports and statements of said banking association, unlawfully, feloniously, knowingly, fraudulently, wrongfully and wilfully, with intent to deceive the Comptroller of the Currency of the United States and the agents and examiners appointed and to be appointed under the laws of the United States to examine the affairs of said bank, in a certain report on said 29th day of September, 1923, then and there made and submitted to the Comptroller of the Currency of the United States under and by virtue of the laws of the United States concerning national banks and known as the report of condition of said The Liberty National Bank of Tulsa at the close of business on September 14, 1923, did make and cause to be made on said 29th day of September, 1923, a certain false entry which they, said Allie E. Lewis and said William Lloyd Lewis each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that, at the close of business of said bank on September 14, 1923, the total aggregate sum of the loans and discounts of said banking association then and there was the sum of $2,106,039.51; whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said entry was wholly false in that the said sum of $2,106,039.51, so falsely entered as aforesaid, included as a part thereof the sum of, to-wit, $29,300.00 as the purported then indebtedness of one Roy A. Koons upon a certain promissory note, made payable to said banking association, in the sum of $29,500.00, dated December 22, 1922, signed R. A. Koons, and designated by the number 15099, whereas, in truth and in fact said Roy A. Koons had theretofore, to-wit, on February 16, 1923, paid the sum of, to-wit, $800.00 upon said note, and had on, to-wit, March 23, 1923, paid the sum of, to-wit, $824.00 upon said note, and had on, to-wit, June 4, 1923, paid the sum of, to-wit, $400.00 upon said note, and had on, to-wit, June 19, 1923, paid the sum of, to-wit, $504.00 upon said note, and had on, to-wit, August 16, 1923, paid the sum of $360.00 upon said note, thereby reducing the

amount owed by said Roy A. Koons upon said note, to the sum of $26,412.00, and whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, the said sum of $2,106,039.51, so falsely entered as aforesaid, included as a part thereof the sum of $20,800.00 as the purported then indebtedness of one Albert M. Ballard upon a certain promissory note, made payable to said banking association in the sum of $21,750.00, dated December 29, 1922, signed A. M. Ballard and designated by the number 16018, whereas, in truth and in fact said Albert M. Ballard had theretofore, to-wit, on February 15, 1923, paid the sum of, to-wit, $3950.00 upon said note, and had on, to-wit, March 21, 1923, paid the sum of, to-wit, $1525.00 upon said note, and had on, to-wit, June 12, 1923, paid the sum of, to-wit, $50.00 upon said note, thereby reducing the amount owed by said Albert M. Ballard upon said note to the sum of $16,225.00; and whereas, in truth and in fact, as said Allie E. Lewis and said William Lloyd Lewis then and there each well knew, the said sum of $2,106,039.51 so falsely entered as aforesaid, included as a part thereof the purported then indebtedness of one Mason Kittess upon a certain purported promissory note, drawn payable to said banking association in the sum of $15,000.00, dated December 18, 1922, signed Mason Kittess, and designated by the number 15077, whereas in truth and in fact said purported promissory note did not in fact represent any valid and existing indebtedness upon the part of said Mason Kittess to said banking association, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States.

FRANK LEE,
United States Attorney.

A true bill. C. E. Dudley, Foreman.

(Endorsements:)

No. 9346. United States District Court, Eastern District of Oklahoma, ... Division. The United States of America vs. Allie E. Lewis, William Lloyd Lewis. Indictment: Violation National Banking Laws—Sec. 5209. (False Entries.) A true bill, C. E. Dudley, Foreman.

Witnesses: J. A. Genau, Washington, D. C.; H. M. Greis, Tulsa, Okla.; E. A. Ross, Tulsa, Okla; John T. Cramer, Tulsa, Okla.; Robert L. Lebus, Tulsa, Okla.; A. M. Ballard, Tulsa, Okla.; R. A. Koons, Tulsa, Okla.

Filed in open court Jun. 23, 1925. W. V. McClure, Clerk.

In the United States District Court for the Eastern District of Oklahoma. United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Demurrer to Each Count of the Indictment.

Comes now the defendants Allie E. Lewis and William Lloyd Lewis, and without waiving their objection to the jurisdiction of this court over the offenses charged in the indictment, and without waiving their object to the Honorable Franklin E. Kennamer to act as trial judge in this cause or pass upon any pleadings herein, and demur separately to each and every separate count thereof, and as grounds for said demurrer urge any say:

(a) Each and every count of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

(b) Each and every count of said indictment is so indefinite and uncertain that it fails to furnish the defendants with such description of the charge against them as will enable them to make their defense and avail themselves of their conviction or acquittal for protection against a further prosecution for the same offense, or to inform the court of the facts so that it may decide whether they are sufficient in law to support a conviction if one should be had.

(c) Each and every count of said indictment from 1 to 37, inclusive, fails to, and does not, charge that the alleged false entry was an item of account, or that the book of the bank in which the entry is alleged to have been made was a book of account, whereas "books" of the bank as used in the statute under which each of said counts is laid means books of account, and "entry" as used in said statute with regard to the book of the bank mean an item of account; and that this construction of the statute has been settled and acquiesced in by the Executive and Judicial Departments of the Government since the enactment of the statute, and the facts alleged in each of said counts of said indictment do not constitute the making of false entries in the books of the Liberty National Bank in the meaning of the statute.

(d) Each count of said indictment from 38 to 40, inclusive, does not describe with sufficient certainty and definiteness the alleged false entry in the report to the Comptroller of the Currency.

(e) Each count of said indictment from 38 to 40, inclusive, is duplicitous, in that the alleged falsity of the item con-

sists in three separate and distinct items which are specifically set out in said counts of the indictment.

(Signed) DAVIDSON & WILLIAMS,
W. S. ROGERS,
GEO. B. SCHWABE,
Attorneys for Defendants.

(Endorsed:) United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, defendants. Demurrer to each count of the indictment. Filed in open court Jul 28, 1925. W. V. McClure, Clerk U. S. District Court.

Muskogee, Monday, July 20, 1925.

(Caption omitted.)

Order.

Now on this 20th day of July, 1925, there coming on for hearing the motion of the defendants to quash the indictment in this cause and to dismiss the cause, and thereupon the defendants offer evidence in support of said motion and the court having heard and considered said evidence and the argument of counsel.

It is hereby ordered that said motion be and the same is hereby overruled to which ruling of the court the defendants except which exceptions are by the court allowed.

F. E. KENNAMER, Judge.

Journal 26, page 84.

(Caption omitted.)

Order.

Now on this the 20th day of July, 1925, there came on for hearing the motion of the defendants to dismiss this cause for want of jurisdiction in this court to try the same and thereupon the defendants offered evidence in support of said motion and the court having considered said evidence and the argument of counsel,

It is ordered by the court that said motion be and the same is hereby overruled to which ruling of the court the defendants and each of them excepted, which exceptions are by the court allowed.

F. E. KENNAMER, Judge.

Muskogee, Tuesday, July 28, 1925.

Now on this 28th day of July, 1925, the District Court of the United States for the Eastern District of Oklahoma, met in Special July session, pursuant to recess, present and presiding, Honorable F. E. Kennamer, Judge.

(Caption omitted.)

Order.

This cause coming on for hearing upon a motion to quash indictment, and the court being fully advised.

It is ordered that said motion be and it is herein overruled, to which ruling defendants except.

And the defendants are allowed to file demurrer to the indictment, and which demurrer is overruled by the court, to which ruling of the court the defendants except.

And thereupon the defendants waive arraignment and each for himself says that he is not guilty of the charge contained in the indictment herein.

Journal 26, page 101.

(Caption omitted.)

Order.

The motion of the defendants to quash the petit jury panel came on for hearing on this, the 21st day of January, 1926, and the Government filed its Demurrer to the Motion of the Defendants to Quash the Petit Jury Panel; and the said Demurrer coming on for hearing, and the court having heard the argument of counsel on both sides, is of the opinion, and hereby orders, that said Demurrer be, and the same is hereby, sustained.

To which ruling of the court the defendants, and each of them, duly excepted this 21st day of January, 1926.

JOHN C. POLLOCK, Judge.

Filed Jan. 21, 1926. W. V. McClure, Clerk.

Ardmore, Monday, January 25, 1926.

Now on this 25th day of January, 1926, the District Court of the United States for the Eastern District of Oklahoma, met in Regular Session, pursuant to recess, present and presiding, Honorable John C. Pollock, Judge.

(Caption omitted.)

Order.

This cause coming on for further trial, and upon motion of each defendant for directed verdict, and after the court being advised. It is ordered that said motion be and it is herein overruled, exceptions saved.

Journal 27, page 125.

(Caption omitted.)

Verdict.

(As to Allie E. Lewis.)

We, the jury in the above entitled cause, duly empaneled ans sworn, upon our oaths find the defendant, Allie E. Lewis, guilty, as charged in the 1st count of the indictment.

We, further find the defendant guilty as charged in the (2nd) count of the indictment.

We, further find the defendant guilty as charged in the (3rd) count of the indictment.

We, further find the defendant guilty as charged in the (4th) count of the indictment.

We, further find the defendant guilty as charged in the (5th) count of the indictment.

We, further find the defendant guilty as charged in the (6th) count of the indictment.

We, further find the defendant guilty as charged in the (7th) count of the indictment.

We, further find the defendant guilty as charged in the (8th) count of the indictment.

We, further find the defendant guilty as charged in the (9th) count of the indictment.

We, further find the defendant guilty as charged in the (10th) count of the indictment.

We, further find the defendant guilty as charged in the (11th) count of the indictment.

We, further find the defendant guilty as charged in the (12th) count of the indictment.

We, further find the defendant guilty as charged in the (13th) count of the indictment.

We, further find the defendant guilty as charged in the (14th) count of the indictment.

We, further find the defendant guilty as charged in the (15th) count of the indictment.

We, further find the defendant guilty as charged in the (16th) count of the indictment.

We, further find the defendant guilty as charged in the (17th) count of the indictment.

We, further find the defendant guilty as charged in the (18th) count of the indictment.

We, further find the defendant guilty as charged in the (19th) count of the indictment.

We, further find the defendant guilty as charged in the (20th) count of the indictment.

We, further find the defendant not guilty as charged in the (21st) count of the indictment.

We, further find the defendant guilty as charged in the (22nd) count of the indictment.

We, further find the defendant guilty as charged in the (23rd) count of the indictment.

We, further find the defendant guilty as charged in the (24th) count of the indictment.

We, further find the defendant guilty as charged in the (25th) count of the indictment.

We, further find the defendant guilty as charged in the (26th) count of the indictment.

We, further find the defendant guilty as charged in the (27th) count of the indictment

We, further find the defendant guilty as charged in the (28th) count of the indictment.

We, further find the defendant guilty as charged in the (29th) count of the indictment.

We, further find the defendant guilty as charged in the (30th) count of the indictment.

We, further find the defendant not guilty as charged in the (31st) count of the indictment.

We, further find the defendant guilty as charged in the (32nd) count of the indictment.

We, further find the defendant guilty as charged in the (33rd) count of the indictment.

We, further find the defendant guilty as charged in the (34th) count of the indictment.

We, further find the defendant not guilty as charged in the (35th) count of the indictment.

We, further find the defendant guilty as charged in the (36th) count of the indictment.

We, further find the defendant not guilty as charged in the (37th) count of the indictment.

We, further find the defendant guilty as charged in the (38th) count of the indictment.

We, further find the defendant guilty as charged in the (39th) count of the indictment.

We, further find the defendant guilty as charged in the (40th) count of the indictment.

R. R. HEATH, Foreman.

Filed Jan. 27, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Verdict.

(As to William Lloyd Lewis.)

We, the jury in the above entitled cause, duly empaneled ans sworn, upon our oaths find the defendant, William Lloyd Lewis, guilty, as charged in the 1st count of the indictment.

We, further find the defendant guilty as charged in the (2nd) count of the indictment.

We, further find the defendant guilty as charged in the (3rd) count of the indictment.

We, further find the defendant guilty as charged in the (4th) count of the indictment.

We, further find the defendant guilty as charged in the (5th) count of the indictment.

We, further find the defendant guilty as charged in the (6th) count of the indictment.

We, further find the defendant guilty as charged in the (7th) count of the indictment.

We, further find the defendant guilty as charged in the (8th) count of the indictment.

We, further find the defendant guilty as charged in the (9th) count of the indictment.

We, further find the defendant guilty as charged in the (10th) count of the indictment.

We, further find the defendant guilty as charged in the (11th) count of the indictment.

We, further find the defendant guilty as charged in the (12th) count of the indictment.

We, further find the defendant guilty as charged in the (13th) count of the indictment.

We, further find the defendant guilty as charged in the (14th) count of the indictment.

We, further find the defendant guilty as charged in the (15th) count of the indictment.

We, further find the defendant guilty as charged in the (16th) count of the indictment.

We, further find the defendant guilty as charged in the (17th) count of the indictment.

We, further find the defendant guilty as charged in the (18th) count of the indictment.

We, further find the defendant guilty as charged in the (19th) count of the indictment.

We, further find the defendant guilty as charged in the (20th) count of the indictment.

We, further find the defendant not guilty as charged in the (21st) count of the indictment.

We, further find the defendant guilty as charged in the (22nd) count of the indictment.

We, further find the defendant guilty as charged in the (23rd) count of the indictment.

We, further find the defendant guilty as charged in the (24th) count of the indictment.

We, further find the defendant guilty as charged in the (25th) count of the indictment.

We, further find the defendant guilty as charged in the (26th) count of the indictment.

We, further find the defendant guilty as charged in the (27th) count of the indictment.

We, further find the defendant guilty as charged in the (28th) count of the indictment.

We, further find the defendant guilty as charged in the (29th) count of the indictment.

We, further find the defendant guilty as charged in the (30th) count of the indictment.

We, further find the defendant not guilty as charged in the (31st) count of the indictment.

We, further find the defendant guilty as charged in the (32nd) count of the indictment.

We, further find the defendant guilty as charged in the (33rd) count of the indictment.

We, further find the defendant guilty as charged in the (34th) count of the indictment.

We, further find the defendant not guilty as charged in the (35th) count of the indictment.

We, further find the defendant guilty as charged in the (36th) count of the indictment.

We, further find the defendant not guilty as charged in the (37th) count of the indictment.

We, further find the defendant guilty as charged in the (38th) count of the indictment.

We, further find the defendant guilty as charged in the (39th) count of the indictment.

We, further find the defendant guilty as charged in the (40th) count of the indictment.

R. R. HEATH, Foreman.

Filed Jan. 27, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Motion in Arrest of Judgment.

Come now the defendants Allie E. Lewis and William Lloyd Lewis and each for himself separately moves the court that the judgment in the above styled cause be arrested as to them and each of them, upon each of the following counts of the indictment, to-wit: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34,

36, 38, 39, and 40, for the following reasons and upon the following grounds:

1. The new United States District Court of the Eastern District of Oklahoma, created and existing under and by virtue of the Act of Congress of February 16, 1925, had no jurisdiction over the offenses charged for the purpose of indictment or trial, and had no jurisdiction to try this cause, or to try the defendants, or either of them, upon the indictment herein for the reason that the offienses charged in the indictment were not committed within the territorial jurisdiction of the present Eastern District of Oklahoma, but were, and are alleged to have been committed in Tulsa County, Oklahoma, in the old United States District Court for the Eastern District of Oklahoma and outside of the territorial jurisdiction of the present Eastern District of Oklahoma, but in what is now a part of the Northern District of Oklahoma; and that under the Sixth Amendment to the Constitution of the United States of America the defendants were and are entitled "to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law"; and the court erred in overruling the motion of the defendants to dismiss the indictment for want of jurisdiction in the new United States District Court for the Eastern District of Oklahoma to try the same.

2. The indictment upon which the defendants were tried and convicted is void because found and returned by an illegal and unlawful grand jury, in that:

(a) The grand jury that found and returned said indictment was not publicly drawn in accordance with the provisions of section 276 of the Judicial Code, but was secretly drawn and its personnel kept secret until the 22nd day of June, 1925, when it was impaneled and which was the day preceding the day on which this indictment was returned.

(b) The grand jury that returned said indictment was drawn on June 22nd, 1925, from the jury box of the United States District Court for the Eastern District of Oklahoma as the same now exists, which jury box did not then contain the names of any persons from or residing in any of the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington; the said jury box having been filled in October, 1924, by the court clerk and jury commissioner of the United States District Court for the Eastern District of Oklahoma as it then existed, with the names of jurors from the entire territorial body of the United States

District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925. The United States District Court for the Northern District of Oklahoma was organized on April 1, 1925, and thereafter on the 7th day of April, 1925, the clerk and jury commissioner for the United States District Court for the Eastern District of Oklahoma opened said jury box and withdrew from it the names of all persons from or residing within the foregoing ten counties which formerly composed a part of the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma, but under the Act of February 16, 1925, became a part of the United States District Court for the Northern District of Oklahoma; that no order of court was made or entered directing the clerk or jury commissioner to withdraw said names from said jury box, nor was any order of court made or entered directing the said grand jury to be returned from any particular part of the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925; that said grand jury was drawn under the following order of the United States District Court for the new Eastern District of Oklahoma, made by Judge R. L. Williams on May 30, 1925, to-wit:

> "It is ordered that the jury commissioner and the clerk of court direct twenty-three grand jurors and three alternate grand jurors to be at Muskogee on June 22, 1925, at nine o'clock A. M."

That the offenses charged in the indictment in this case are alleged to have been committed in Tulsa County, Oklahoma, prior to February 16, 1925, and the indictment was returned in the new United States District Court for the Eastern District of Oklahoma by a grand jury drawn as aforesaid from the territorial body of the new Eastern District, and that under the provisions of the Constitution of the United States the defendants are entitled to have the grand jury that investigated and returned this indictment drawn from the entire territorial body of the district in which the offenses charged in the indictment are alleged to have been committed, as the same existed at the time of the commission of said offenses, which would be the old United States District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925.

The trial court therefore erred in overruling the motion of the defendants to quash and dismiss the said indictment and in not sustaining their said motion and plea in abatement.

3. The verdicts in this case are void because found and returned by an illegal and unlawful petit jury, in that a large

part of said petit jury was obtained from a venire of thirty jurors drawn from the jury box of the new United States District Court for the Eastern District of Oklahoma, which was filled by the clerk and jury commissioner of said court on September 4, 1925, with the names from the entire territorial body of the new United States District Court for the Eastern District of Oklahoma, and which did not contain the names of any jurors from any of the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington. The said jury box from which the names of said thirty jurors were drawn on December 3, 1925, was filled in October, 1924, by the court clerk and jury commissioner of the United States District Court for the Eastern District of Oklahoma as it now exists, with the names of jurors from the entire territorial body of the new United States District Court for the Eastern District of Oklahoma as it now exists. The United States District Court for the Northern District of Oklahoma was organized on April 1, 1925, and contains within its territorial jurisdiction the aforesaid ten counties, including Tulsa County, where the offenses charged in the indictment are alleged to have been committed, and no order of court was made or entered directing the said petit jury panel to be returned from any particular part of the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925; that said petit jury panel was drawn under the following order of the new United States District Court for the Eastern District of Oklahoma, made by Judge R. L. Williams, on December 2nd, 1925, to-wit:

> "It is ordered by the court that the clerk and jury commissioner of this court draw the names of thirty persons from the jury box for petit jurors to appear at Ardmore, Oklahoma, on January 18, 1926, at 9:00 [ ] of said date."

That no other order of court was made or entered with reference to the drawing of said petit jury panel; that said petit jury panel was exhausted before any peremptory challenges had been exhausted, with eleven tentative jurors in the box. The defendants each asked that for the purpose of completing said petit jury the court direct that a jury box be prepared and filled with a sufficient number of names of jurors selected by the clerk and jury commissioner from the entire territorial body of the old United States District Court for the Eastern District of Oklahoma as the name existed prior to the 16th day of February, 1925, and as the same existed at the time the offenses charged in the indictment are alleged to have been committed, and that a sufficient number of names

be drawn therefrom to complete the jury panel. The court refused this request of the defendants and ordered an open venire for twenty jurors to be summoned by the marshal of the court from the entire territorial body of the old United States District Court for the Eastern District of Oklahoma at the time the offenses charged in the indictment are alleged to have been committed, from which open venire a sufficient number of jurors were obtained to complete the petit jury for the trial of this cause, the defendants having exercised all the peremptory challenges allowed them under the law in completing said petit jury. None of the jurors summoned by the marshal under the open venire were from any of the ten counties formerly a part of the old United States District Court for the Eastern District of Oklahoma, but now a part of the United States District Court for the Northern District of Oklahoma, but all of them were citizens and residents of the territory now embraced within the new United States District Court for the Eastern District of Oklahoma as the same has existed since February 16, 1925.

The trial court therefore erred in sustaining the Government's demurrer to the motion of the defendants to quash the petit jury panel drawn December 3, 1925, from which a large part of the jury that returned the verdicts in this case was obtained, and in refusing to have prepared a jury box filled with the names of jurors from the entire territorial body of the old Eastern District of Oklahoma as the same existed at the time the offenses charged in the indictment are alleged to have been committed, and ordering the jury panel from which the jurors for the trial of this case should be selected, should be drawn.

4. The evidence offered by the Government under each of said counts was wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

5. The evidence offered by the Government under each of said counts was wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

6. The verdicts of the jury are not supported by the evidence.

7. The verdicts of the jury, if supported by any evidence at all, are not sustained by sufficient evidence and are contrary to the manifest weight of the evidence.

8. The evidence under each of said counts does not exclude every reasonable hypothesis but that of guilt.

9. The trial court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty up-

on each separate count of the indictment interposed at the conclusion of the Government's testimony in chief.

10. The trial court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of all the evidence of the case, because all the evidence offered under each of said counts was wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

11. The trial court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of the Government's testimony in chief.

12. The trial court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of all the evidence in the case because all the evidence offered under each of said counts was wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

13. Each separate count of said indictment is so vague, indefinite and uncertain that it does not sufficiently state or set forth the offense charged therein against the defendants, or either of them, or the facts constituting the alleged offense, so as to advise the defendants, or either of them, of the exact charge which they are required to meet, or give them a fair opportunity to prepare their defense thereto, or to enable them to avail themselves of a conviction or acquittal in defense of another prosecution for the same offense, or so that the court might be able to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

14. The facts set forth in each separate count of the indictment do not constitute an offiense under the laws of the United States, nor a crime against the United States; and under each separate count of said indictment the facts therein set forth do not show the commission by the defendants, or either of them, of the offense of making, or directing to be made, a false entry in any book, statement or report of the Liberty National Bank of Tulsa, Oklahoma, within the meaning of the Act of Congress under which defendants are prosecuted. The indictment under each of the following separate counts thereof, to-wit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 36, 38, 39 and 40 fails to set out in haec verba the false entry in the minute book of the Liberty National Bank of Tulsa, Ok-

lahoma, which they are charged therein with having made, or caused to be made, and does not set out or allege any excuse for the failure to set out the false entry in haec verba. Each of said last named counts of the indictment fails to sufficiently describe or identify the false entry which the defendants are charged with having made, or caused to be made, but merely alleges the pleader's conclusion as to the effect of the alleged false entry which is not set out in haec verba or sufficiently described or identified.

15. It appears from the allegations of each of the following separate counts of said indictment, to-wit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 36, that the alleged false entry therein charged was made in a minute book of the Liberty National Bank of Tulsa, Oklahoma, wherein were recorded the proceedings of the Board of Directors of the Liberty National Bank, and the proceedings of the stockholders of said bank at the annual stockholders meetings, and that the alleged false entry was not an item of account, nor made in a book of account of the Liberty National Bank of Tulsa, Oklahoma; whereas, the word "entry" as used in the Act of Congress under which the defendants are prosecuted, means an item of account; and the word "book" as used therein means a book of account of the bank.

16. The trial court erred in overruling the demurrer of the defendants as to each separate count of the indictment.

17. The evidence under each separate count of the indictment is wholly insufficient to establish that the defendant Allie E. Lewis made, or directed to be made, the false entry therein charged.

18. The evidence under each separate count of the indictment is wholly insufficient to establish that the defendant William Lloyd Lewis made, or directed to be made, the false entry therein charged.

This motion in arrest of judgement is made on behalf of each defendant separately and as to each separate count of the indictment, independently of each and all the other counts thereof.

R. L. DAVIDSON,
W. J. WILLIAMS,
Attorneys for defendants Allie E. Lewis and William Lloyd Lewis.

Filed Feb. 15, 1926, W. V. McClure, Clerk.

(Caption omitted.)

Order.

On this the 30th day of March, 1926, there came on regularly for hearing the motion of the defendants for a new trial, which was by the court heard and overruled, to which the defendants and each of them at the time duly excepted; and thereupon there came on for hearing the motions of the defendants in arrest of judgment, which were by the court heard and overruled, to which ruling of the court the defendants and each of them at the time duly excepted.

JOHN C. POLLOCK, Judge.

Filed Mar. 30, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Judgment and Sentence.

By order of court made and entered at the regular 1925 term of said court, at Ardmore, on January 27, 1926, said cause was assigned for further hearing and disposition at Muskogee in said district on March 30, 1926.

Now, in accordance with such order and pursuant thereto, on this March 30, 1926, this court met at Muskogee as of the said regular October, 1925, term of the said court, at Ardmore; present and presiding Hon. John C. Pollock, judge of said court, and especially designated to preside at said regular Ardmore term at the trial of said case.

Comes now the United States by and through the United States Attorney, and comes the defendant, Allie E. Lewis, in person and by his attorney; and the United States Attorney asks judgment and sentence of the court upon the verdict of guilty returned into court on January 27, 1926, by the jury herein at the said regular October, 1925, term of said court, at Ardmore; and it being by said court demanded of the said defendant, Allie E. Lewis, what he has to say or can say why the sentence of the law should not now be pronounced against him, and it appearing that he has nothing further or other to say than he has heretofore said in response thereto, and there being no reason offered why a judgment and sentence should not be pronounced; whereupon, the premises being seen and by the court well and sufficiently understood:

It is now by the said court here considered, ordered and adjudged, that the said defendant, Allie E. Lewis, for his

crime of making a certain false entry in the books of the Liberty National Bank of Tulsa, Oklahoma, on March 20, 1923, the same being the first count in said indictment, be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the term and period of five years on the said first count of said indictment, and that he make his fine unto the United States of America in the sum of $5,000.00, and pay all costs of this prosecution, and that said Allie E. Lewis stand committed until said fine and costs are fully paid.

It is now by the said court here further considered, ordered and adjudged, that the said defendant, Allie E. Lewis, for his crime aforesaid of making false entries in the books of said national banking association and in reports to the Comptroller of the Currency on the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-second, thirty-third, thirty-fourth, thirty-sixth, thirty-eighth, thirty-ninth and fortieth counts in said indictment be imprisoned in the United States penitentiary at Leavenworth, Kansas, for the term and period of five years on each of the last aforementioned thirty-five counts, such sentence of five years on each of said last aforementioned thirty-five counts to run concurrent with each other and with the sentence heretofore imposed on count one of said indictment.

It is now by the court here further considered, ordered and adjudged, that the said sentences of five years on each and all of the said thirty-six counts of said indictment are to run concurrent against Allie E. Lewis and to run concurrent with the first five years of the twelve-year sentence imposed August 20, 1925, at Muskogee, in said district, in case No. 8622, against the said Allie E. Lewis; and to run concurrent with any and all other sentences which may have been imposed against the said Allie E. Lewis for violation of the national banking law involving the Liberty National Bank of Tulsa, Oklahoma.

Comes now the United States by and through the United States Attorney, and comes the defendant, William Lloyd Lewis, in person and by his attorney; and the United States Attorney asks judgment and sentence of the court upon the verdict of guilty returned into court on January 27, 1926, by the jury herein at the said regular October 1925 term of said

court at Ardmore; and it being by said court demanded of the said defendant William Lloyd Lewis what he has to say or can say why the sentence of the law should not now be pronounced against him, and it appearing that he has nothing further or other to say than he has heretofore said in response thereto, and there being no reason offered why judgment and sentence should not be pronounced; whereupon the premises being seen and by the court well and sufficiently understood;

It is now by the said court here considered, ordered and adjudged that the said defendant William Lloyd Lewis for his crime of making a certain false entry in the books of the Liberty National Bank of Tulsa, Oklahoma, on March 20, 1923, the same being the first count in said indictment, be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the term and period of five years on the said first count of said indictment; and that he make his fine unto the United States of America, in the sum of $5,000.00, and pay all costs of this prosecution, and that said William Lloyd Lewis stand committed until said fine and costs are fully paid.

It is now by the said court here further considered, ordered and adjudged that the said defendant William Lloyd Lewis, for his crime aforesaid of making false entries in the books of said National Banking Association and in reports to the Comptroller of the Currency on the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-second, twenty-third twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty second, thirty-third, thirty-fourth, thirty-sixth, thirty-eighth, thirty-ninth and fortieth counts in said indictment be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the term and period of five years on each of the last aforementioned thirty-five counts, such sentence of five years on each of said last aforementioned thirty-five counts to run concurrent with each other and with the sentence heretofore imposed on count one of said indictment.

It is now by the court here further considered, ordered and adjudged that the said sentences of five years on each and all of the said thirty-six counts of said indictment are to run concurrent against William Lloyd Lewis and to run concurrent with the first five years of the twelve-year sentence imposed August 20, 1925, at Muskogee, in said District, in case No. 8622, against the said William Lloyd Lewis; and to run concurrent with any and all other sentences which may have been imposed against the said William Lloyd Lewis for violation of

the National Banking Law involving the Liberty National Bank of Tulsa, Oklahoma.

JOHN C. POLLOCK,
Judge.

Filed Mar. 30, 1926, W. V. McClure, Clerk.

(Caption omitted.)

Bill of Exceptions.

(No. 1.)

Be It Remembered, that on the 10th day of July, A. D. 1925 there was filed in the clerk's office of the United States District Court for the Eastern District of Oklahoma, at Muskogee, objections of the defendants Allie E. Lewis and William Lloyd Lewis to the Hon. Franklin E. Kennamer sitting as trial judge in this case, which said objections are in words and figures as follows, to-wit:

"In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Objection of the Defendants to the Hon. Franklin E. Kennamer Sitting as the Trial Judge.

Comes now the defendants Allie E. Lewis and William Lloyd Lewis in the above styled cause and object to the Hon. Franklin E. Kennamer sitting as trial judge in this cause and object to him hearing or passing upon any motion, demurrer, or other pleadings in this cause, and for grounds therefor says: That prior to the 16th day of February, 1925, the Hon. R. L. Williams was the Senior Judge of the United States District Court for the Eastern District of Oklahoma, as the same had existed prior to said date, and that the Hon. Franklin E. Kennamer was Junior Judge of the United States District Court for the Eastern District of Oklahoma as it existed prior to said date; that on the 16th day of February, 1925, the Congress of the United States by an act approved on said date by the President of the United States, divided the State of Oklahoma, into three judicial districts and thereby created the Northern, Eastern and Western Districts of Oklahoma; that said Act of Congress took effect on the 16th day of February, 1925, and under its terms the Junior Judge of the Eastern District of Oklahoma, to-wit, the Hon. Franklin E. Kennamer, was assigned to the Northern District of Oklahoma to hold said court in said district; and said Act of Congress further pro-

vided that the President, by and with the advice and consent of the Senate, shall appoint for said Northern District of Oklahoma, a District Judge upon the death, disability or retirement of the District Judge, who by its terms was assigned to said Northern District, to-wit, the Hon. Franklin E. Kennamer, that under the terms of said Act of Congress the Hon. Franklin E. Kennamer has been by Congress assigned to the Northern District of Oklahoma until the death, disability or retirement of the said Franklin E. Kennamer, or until Congress itself shall revoke said assignment: that on the 29th day of June, 1925, the Hon. Kimbrough Stone, acting Senior Circuit Judge of the United States Circuit Court of Appeals for the Eighth Circuit, by an order of that date, attempted to designate and appoint the Hon. Franklin E. Kennamer to hold or assist in holding the District Court of the United States in and for the several divisions of the Eastern District of Oklahoma, at the times and places appointed by law for holding said court from that date until January 1, 1927, in place or in aid of the Hon. R. L. Williams, United States District Judge for the said Eastern District of Oklahoma. A true and correct copy of said order is attached hereto and made a part hereof and marked for identification defendants' "Exhibit A". That neither the Circuit Court of Appeals for the Eighth Circuit nor any judge thereof, has any authority or power to revoke the congressional assignment of the Hon. Franklin E. Kennamer to the Northern District of Oklahoma, or to assign, designate or appoint the Hon. Franklin E. Kennamer to hold or assist in holding the District Court of the United States in or for any judicial district of the United States other than the Northern District of Oklahoma so long as his assignment to the Northern District by Congress shall remain in force; that by reason of these facts the Hon. Franklin E. Kennamer is without power or authority to act as District Judge in the Eastern District of Oklahoma as the same now exists, or as same existed prior to the 16th day of February, 1925.

DAVIDSON & WILLIAMS,
Attorneys for Defendants.

(Attached to said instrument appears:)

United States of America, Eighth Circuit.

In my judgemnt the public interests require the designation and appointment of a District Judge of this Circuit to hold and assist in holding the District Court of the United States for the Eastern District of Oklahoma in place or in aid of the District Judge of that District.

I do, therefore, by these presents designate and appoint the Hon. Franklin E. Kennamer United States District Judge for

the Northern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Eastern District of Oklahoma, at the times and places appointed by law for holding said court from this date until January 1, 1927, in place or in aid of the Honorable R. L. Williams, United States District Judge for the said Eastern District of Oklahoma.

Witness my hand this 29th day of June, A. D. 1925.

KIMBROUGH STONE,
Senior Circuit Judge.

The above assignment is made without intending to determine the present jurisdiction of either Judge R. L. Williams or Judge Franklin E. Kennamer in the former Eastern District of Oklahoma, but to remove all question of the jurisdiction of either Judge to dispose of causes and matters filed therein before the organization of the Northern District of Oklahoma.

W. V. McCLURE,
Filed Jul. 3, 1925. Clerk, U. S. District Court.

"Exhibit A"

(Indorsed upon the foregoing objections of the defendants to Hon. Franklin E. Kennamer sitting as the trial judge in this case appears:) Filed Jul. 10, 1925.

W. V. McCLURE,
Clerk, U. S. District Court."

Be It Remembered, that on the 10th day of July, A. D. 1925, the defendants Allie E. Lewis and William Lloyd Lewis filed in the above entitled cause their motion to dismiss the indictment for want of jurisdiction in this court to try the same, which motion is in words and figures as follows, to-wit:

"In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Motion to Dismiss Indictment for Want of Jurisdiction in This Court to Try the Same.

Comes now the defendants Allie E. Lewis and William Lloyd Lewis in the above styled cause and moves the court to dismiss the indictment herein because this court has no jurisdiction to try the same, for the following reasons:

1. This court is without jurisdiction to try the defendants Allie E. Lewis and William Lloyd Lewis on the indictment herein because it appears from the indictment that all the offenses therein charged were committed, if committed at all, prior to the 1st day of April, 1925, and prior to the 16th day of February, 1925; that this indictment was found and returned by a grand jury in this court on the 23rd day of June, 1925; that the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time the offenses charged in the indictment are alleged to have been committed include the following counties of Oklahoma, and none other: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Craig, Creek, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LaFlore, Love, Mayes, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Rogers, Seminole, Stephens, Sequoyah, Tulsa, Wagoner and Washington. That at the time the offenses charged in this indictment are alleged to have been committed the territorial jurisdiction of the United States District Court for the Western District of Oklahoma included the following counties of Oklahoma, and none other: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward. That on the 16th day of February, 1925, the President of the United States approved a certain bill passed by the 68th Congress of the United States of America, dividing the State of Oklahoma into three judicial districts, and creating the Northern, Eastern and Western districts of Oklahoma. This Act of Congress took effect on the 16th day of February, 1925, and under its terms the territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Rogers, Pawnee, Tulsa and Washington as they existed on said date constitute the Northern District of Oklahoma, and the territory embraced on January 1, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LaFlore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner as they existed on said date constitute the Eastern District of Oklahoma, and the territory embraced on January 1, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan,

Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward as they existed on said date constitute the Western District of Oklahoma, and by the terms of this Act of Congress the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington, which formerly comprised a part of the territory embraced within the Eastern District of Oklahoma, and the counties of Pawnee and Osage, which formerly comprised a part of the territorial jurisdiction of the Western District of Oklahoma, were made a new district known as the Northern District of Oklahoma; and under the allegations of said indictment the offenses therein charged to have been committed by the defendants Allie E. Lewis and William Lloyd Lewis were committed in Tulsa County, Oklahoma, prior to the 16th day of February, 1925; that the United States District Court for the Northern District of Oklahoma created under said Act of Congress was organized on the 1st day of April, 1925, and has continuously ever since existed and operated under said Act of Congress; that under the Sixth Amendment to the Constitution of the United States of America and other provisions of the Constitution of the United States of America, the jurisdiction of the United States District Court for the Eastern District of Oklahoma to commence and prosecute the offenses charged in this indictment against the defendants Allie E. Lewis and William Lloyd Lewis ceased and determined on the 16th day of February, 1925; that if its jurisdiction did not cease and determine on the 16th day of February, 1925, its jurisdiction did cease and determine on the 1st day of April, 1925, when the United States District Court for the Northern District of Oklahoma was organized; that Tulsa County, Oklahoma, where the offenses charged in the indictment were alleged to have been committed is not within the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma, as it exists, and that under the Sixth Amendment to the Constitution of the United States of America, the defendants are entitled to a speedy public trial by an impartial jury of the State and District wherein the crime was committed, which district must have been previously ascertained by law; that the offenses charged in this indictment were not committed within the Eastern District of Oklahoma as it now exists, and that the Eastern District of Oklahoma as it now exists was not ascertained by law prior to the commission of the offenses charged in this indictment; that the Act creating the Northern, Eastern and Western Districts of Oklahoma which took effect February 16, 1925, does not by its terms preserve or continue the old Eastern District of Oklahoma as it existed at the time the

offenses charged in the indictment are alleged to have been committed, for the purpose of commencing or prosecuting crimes committed within the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington counties prior to the taking effect of said Act, or prior to the organization of the Northern District of Oklahoma, and for these reasons the United States District Court for the Eastern District of Oklahoma as same now exists has no jurisdiction to try these defendants on said indictment.

DAVIDSON & WILLIAMS,
Attorneys for Defendant.

(Indorsed thereon appears:) Filed Jul. 10, 1925. W. V. McClure, Clerk U. S. District Court.

Be It Remembered, that on the 10th day of July, A. D. 1925, defendants, Allie E. Lewis and William Lloyd Lewis, filed in the above entitled cause *his* motion to quash and dismiss the indictment in this case, which said motion is in words and figures as follows, to-wit:

"In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants. —No. 9346.

Motion to Quash and Dismiss Indictment.

Comes now the defendants Allie E. Lewis and William Lloyd Lewis in the above styled cause and moves the court to quash and dismiss the indictment herein for the following reasons:

1. This court is without jurisdiction to commence or prosecute the defendants Allie E. Lewis and William Lloyd Lewis for the offenses charged in this indictment because it appears from the indictment that all the offenses therein charged were committed, if committed at all, prior to the 1st day of April, 1925, and prior to the 16th day of February, 1925, and that this indictment was found and returned by a grand jury in this court on the 23rd day of June, 1925; that the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time the offenses charged in this indictment are alleged to have been committed include the following counties of Oklahoma, and none other: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Craig, Creek, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LeFlore, Love, Mayes, McClain, Muskogee, McIn-

tosh, McCurtain, Murray, Marshall, Nowata, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pushmataha, Pontotoc, Rogers, Seminole, Stephens, Sequoyah, Tulsa, Wagoner and Washington. That at the time the offenses charged in this indictment are alleged to have been committed the territorial jurisdiction of the United States District Court for the Western District of Oklahoma included the following counties in Oklahoma, and none other: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottowatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. That on the 16th day of February, 1925, the President of the United States approved a certain bill passed by the 68th Congress of the United States of America dividing the State of Oklahoma into three judicial districts, and creating the Northern, Eastern and Western Districts of Oklahoma. This Act of Congress took effect on the 16th day of February, 1925, and under its terms the territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington as they existed on said date constitute the Northern District of Oklahoma; and the territory embraced on January 1, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LaFlore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah and Wagoner as they existed on said date constitute the Eastern District of Oklahoma; and the territory embraced on January 1, 1925,, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward as they existed on said date constitute the Western District of Oklahoma, and by the terms of this Act of Congress the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington, which formerly comprised a part of the territory embraced within the Eastern District of Oklahoma, and the counties of Pawnee and Osage, which formerly comprised a part of the territorial jurisdiction of the Western District of Oklahoma, were made a new district known as the Northern District of Oklahoma; and under the allegations of said indictment the offenses therein charged to have been committed by the defendants Allie E. Lewis and William Lloyd Lew-

is were committed in Tulsa County, Oklahoma, prior to the 16th day of February, 1925; that the United States District Court for the Northern District of Oklahoma created under said Act of Congress, was organized on the 1st day of April, 1925, and has continuously ever since existed and operated under said Act of Congress; that under the Sixth Amendment to the Constitution of the United States of America and other provisions of the Constitution of the United States of America, the jurisdiction of the United States District Court for the Eastern District of Oklahoma to commence and prosecute the offenses charged in this indictment against the defendants Allie E. Lewis and William Lloyd Lewis ceased and determined on the 16th day of February, 1925; that if its jurisdiction did not cease and determine on February 16, 1925, its jurisdiction did cease and determine on the 1st day of April, 1925, when the United States District Court for the Eastern District of Oklahoma was organized; that Tulsa County, Oklahoma, where the offenses charged in the indictment are alleged to have been committed, was not within the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time this indictment was found and returned, or at the time the grand jury finding and returning said indictment was drawn and impaneled.

2. As a further ground for this motion the defendants Allie E. Lewis and William Lloyd Lewis show and represent to the court that the grand jury that found and returned this indictment was not a legal grand jury for that purpose, and was without authority or jurisdiction to find or return this indictment against the defendants Allie E. Lewis and William Lloyd Lewis for the offenses charged in the indictment, for the reason that the jury box from which the names were drawn to obtain the jurors constituting said grand jury was filled in October, 1924, with names from the entire territory embraced within the United States District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925; that after the 16th day of February, 1925, and prior to the drawing of the names therefrom from which the grand jury that returned this indictment was obtained, the clerk of the United States District Court for the Eastern District of Oklahoma as it now exists opened the said jury box and withdrew from it the names of all persons residing within the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington; that after the said grand jury box had been opened and said names so withdrawn the grand jury that found and returned this indictment was drawn and summoned; that at the time said grand jury was drawn from said jury box the said jury box con-

tained only names from the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma as it has existed since the 16th day of February, 1925, and did not contain the names of any persons from the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington; that at the time said grand jury was drawn and impaneled the jury box from which it was drawn did not contain names from the territorial body of the Eastern District of Oklahoma as it existed at the time the offenses charged in the indictment are alleged to have been committed; that under the provisions of the Constitution of the United States defendants Allie E. Lewis and William Lloyd Lewis is entitled to have the grand jury that investigated and returned this indictment drawn from the jury box containing a list of names from the entire territorial body of the district as it existed at the time the offenses charged in the indictment are alleged to have been committed, and that this indictment for these reasons is illegal and should be quashed and this cause dismissed.

DAVIDSON & WILLIAMS,
Attorneys for Defendants.

Be It Remembered, that on the 14th day of July, A. D. 1925, defendants Allie E. Lewis and William Lloyd Lewis filed in the above entitled cause their amended motion to quash and dismiss the indictment and plea in abatement, which said motion and plea is in words and figures as follows, to-wit:

In the United States District Court for the Eastern District of Oklahoma. United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Amended Motion to Quash and Dismiss Indictment and Plea in Abatement.

Come now defendants Allie E. Lewis and William Lloyd Lewis in the above styled cause and move the court to quash and dismiss the indictment herein and abate the prosecution thereof for the following reasons.

1. This court is without jurisdiction to commence or prosecute the defendants Allie E. Lewis and William Lloyd Lewis for the offenses charged in this indictment, because it appears from the indictment that all the offenses therein charged were committed, if committed at all, prior to the 1st day of April, 1925, and prior to the 16th day of February, 1925, and

that this indictment was found and returned by a grand jury in this court on the 23rd day of June, 1925; that the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time the offenses charged in this indictment are alleged to have been committed include the following counties of Oklahoma, and none other: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Craig, Creek, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, La Flore, Love, Mayes, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pushmataha, Pontotoc, Rogers, Seminole, Stephens, Sequoyah, Tulsa, Wagoner and Washington. That at the time the offenses charged in this indictment are alleged to have been committed the territorial jurisdiction of the United States District Court for the Western District of Oklahoma included the following counties of Oklahoma, and none other: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. That on the 16th day of February, 1925, the President of the United States approved a certain bill passed by the 68th Congress of the United States of America dividing the State of Oklahoma into three judicial districts, and creating the Northern, Eastern and Western Districts of Oklahoma. This Act of Congress took effect on the 16th day of February, 1925, and under its terms the territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington, as they existed on said date, constitute the Northern District of Oklahoma; and the territory embraced on January 1, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, La Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah and Wagoner as they existed on said date constitute the Eastern District of Oklahoma; and the territory embraced on January 1, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward as they existed on said date constitute the Western District of Oklahoma, and by the terms of this Act of Congress the counties of Craig, Creek, Dela-

ware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington, which formerly comprised a part of the territory embraced within the Eastern District of Oklahoma, and the counties of Pawnee and Osage, which formerly comprised a part of the territorial jurisdiction of the Western District of Oklahoma, were made a new district known as the Northern District of Oklahoma; and under the allegations of said indictment the offenses therein charged to have been committed by the defendants Allie E. Lewis and William Lloyd Lewis were committed in Tulsa County, Oklahoma, prior to the 16th day of February, 1925; that the United States District Court for the Northern District of Oklahoma created under said Act of Congress was organized on the 1st day of April, 1925, and has continuously ever since existed and operated under said Act of Congress; that under the Sixth Amendment to the Constitution of the United States of America and other provisions of the Constitution of the United States of America, the jurisdiction of the United States District Court for the Eastern District of Oklahoma to commence and prosecute the offenses charged in this indictment against the defendants Allie E. Lewis and William Lloyd Lewis ceased and determined on the 16th day of February, 1925; that if its jurisdiction did not cease and determine on February 16, 1925, its jurisdiction did cease and determine on the 1st day of April, 1925, when the United States District Court for the Northern District of Oklahoma was organized; that Tulsa County, Oklahoma, where the offenses charged in the indictment are alleged to have been committed was not within the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time this indictment was found and returned, or at the time the grand jury finding and returning said indictment was drawn and impaneled.

2. As a further ground for this motion and plea, the defendants Allie E. Lewis and William Lloyd Lewis show and represent to the court that the grand jury that found and returned this indictment was not a legal grand jury for that purpose and was without authority or jurisdiction to find and return this indictment against the defendants Allie E. Lewis and William Lloyd Lewis for the offenses charged in the indictment, because:

(a) The names of the jurors constituting said grand jury were drawn on June 2nd, 1925, from the jury box of the United States District Court for the Eastern District of Oklahoma as the same then existed; that said jury box did not then contain the names of any persons from, or residing in, the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington; that the said jury box

from which said names were drawn was filled in October, 1924, by W. V. McClure, as clerk, and Harry W. Gibson Jr., as jury commissioner, of the United States District Court for the Eastern District of Oklahoma as it then existed, with more than eleven hundred (1100) names selected by said clerk and jury commissioner from the body of the entire territory embraced within the United States District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925; that after the 16th day of February, 1925, and prior to the drawing of the names therefrom from which the grand jury that returned this indictment was obtained, the said clerk of the United States District Court for the Eastern District of Oklahoma and the said jury commissioner of said court as it now exists, opened the said jury box and withdrew from it the names of all persons from and residing within the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington; that after the withdrawal of said names from said jury box the same contained only the names of persons from and residing within the territorial jurisdiction of the Eastern District of Oklahoma as the same now exists, and that after the said jury box had been opened and said names so withdrawn, the grand jury that found and returned this indictment was drawn and summoned, and that at the time said grand jury was drawn from said jury box the said jury box did not contain the names of any persons from the counties of Craig, Creek, Delaware, Rogers, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington; that at the time said grand jury was drawn and impaneled the jury box from which it was drawn did not contain the names of persons from the territorial body of the entire Eastern District of Oklahoma as it existed at the time the offenses charged in the indictment are alleged to have been committed; that no order of the court was made or entered directing the jurors constituting said grand jury to be returned from any particular part of the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925. The only order ever made by the court for the drawing of the grand jury that returned this indictment was made by the Hon. R. L. Williams, as judge, on the 30th day of May, 1925, at a purported special term of the court at Muskogee, Oklahoma, and is in the following language:

> "It is ordered that the jury commissioner and the clerk of the court draw 23 grand jurors and 3 alternate grand jurors to appear at Muskogee, on June 22, 1925, at 9: A. M."

A certified copy of said order is attached hereto as "Exhibit

No. 1." That the purported special term of the court at Muskogee at which said order was made was called on the 22nd day of January, 1925, by an order of the court made and entered of record, said special term to be held at Muskogee beginning on the 3rd day of March, 1925, at nine o'clock A. M. A certified copy of said order calling said special term is attached hereto and is marked "Exhibit No. 2"; that said special term at Muskogee was recessed subject to call by the Hon. R. L. Williams, as judge of said court, and that there was no other order of court calling the special term of the court at which this indictment was returned than the order of January 22, 1925; that the said special term of the court at Muskogee at which this indictment was returned was by operation of law adjourned and closed by the taking effect of the Act of Congress of February 16, 1925, creating the Northern, Eastern and Western Judicial Districts in Oklahoma, or at least said special term was adjourned and closed on the 1st day of April, 1925, upon the organization of the Northern District of Oklahoma under said Act of Congress, and under the provisions of the Constitution of the United States defendants Allie E. Lewis and William Lloyd Lewis are entitled to have the grand jury that investigated and returned this indictment drawn from the jury box containing a list of names from the entire territorial body of the district in which the offenses charged in the indictment are alleged to have been committed as the same existed at the time of the commission of said offenses; that the withdrawal of all names from the jury box from the ten counties formerly a part of the Eastern District of Oklahoma and now a part of the Northern District of Oklahoma was done for the purpose of providing and constituting a jury box for the United States District Court for the Eastern District of Oklahoma as it has existed since the 16th day of February, 1925, or at least since the 1st day of April, 1925; that the said jury box after the withdrawal of said names was not and did not constitute a legal jury box legally filled for the United States District Court for the Eastern District of Oklahoma as the same existed prior to the 16th day of February, 1925, or as the same existed prior to the 1st day of April, 1925, or for the United States District Court for the Eastern District of Oklahoma as the same now exists, and that after the withdrawal of said names from said jury box it was and is now illegally filled, and an illegally constituted jury box for any and all purposes for both the old and new Eastern District of Oklahoma.

(b) The names of the grand jurors constituting the grand jury that returned this indictment were not publicly drawn from the jury box in accordance with the provisions of sec-

tion 276 of the Judicial Code, or in accordance with the rules of the court adopted and spread of record by order of the court on December 9, 1916, in this, that prior to the drawing of said grand jury the Hon. R. L. Williams, as senior judge of the United States District Court for the Eastern District of Oklahoma, instructed said clerk and said jury commissioner and said marshal for said court, and all their deputies, to keep secret the names of the jurors drawn and not permit any one to know the names of the jurors until the day on which the said grand jury was impaneled; that these instructions were general and applied both to grand and petit jurors for all cases, and included an instruction that the venire under which the grand jury was summoned should not be returned or filed in court until the day on which the grand jury was impaneled; that under these instructions, which have been observed and followed strictly by the officers of the court, it is impossible for any party to obtain the names of prospective grand or petit jurors until the day on which the jury is impaneled; that under the rules of the court adopted on the 9th day of December, 1916, it is provided:

> "Whenever the court or the judge thereof shall order a grand or petit jury drawn for service at any term of court, the clerk shall enter such order of record, and notify the jury commissioner of the time of such drawing, and the jury commissioner shall attend at the clerk's office, at such time, and thereupon, after the jury box shall have been thoroughly shaken, the said commissioner and the said clerk or one of his deputies, shall in the presence of each other, in the clerk's office, publicly open said jury box, and after placing same in a position that neither can see into it, shall publicly draw therefrom, alternately, reading each name aloud, one at a time, until the number of jurors required in the order of court shall have been drawn.
>
> "Upon the completion of such drawing the clerk shall enter the names drawn of record and shall issue venire facias for such jury or jurors, returnable at such time and place as the court or judge shall in his order direct, and said venire facias shall be served and returned by the marshal, as provided by law."

That the defendants believe, and therefore state, this rule of the court was not complied with, and the drawing of the grand jury that returned this indictment, in this, that the jury box was not thoroughly shaken before the drawing of the names therefrom; that said jury box was not placed in a posi-

tion that neither the clerk or jury commissioner could see into it; that the names of said grand jury were not drawn therefrom alternately by the clerk and jury commissioner, one at a time, nor read aloud as the same were drawn, and that upon the completion of such drawing the clerk did not enter the names so drawn of record, and that the names of said jurors were kept secret until the 22nd day of June, 1925, when the grand jury was impaneled.

These defendants further state that they did not know, and had no means of knowing, prior to the return of this indictment that the grand jury finding and returning same would investigate the matters charged in said indictment, and had no opportunity to challenge the array until after the return of said indictment; that these defendants were not notified that their case would be brought before the grand jury, and did not know that their case would be investigated by said grand jury, and that they had no opportunity of objecting to the competency of said grand jury before said indictment was found and returned; that prior thereto, and on the 9th day of October, 1924, the grand jury of said court investigated the acts and conduct of these defendants in connection with the Liberty National Bank of Tulsa, Oklahoma, and its operation, and found and returned against them an indictment charging them with conspiracy in one count, and with willful misapplication of the moneys, funds and credits of the bank in twenty counts, and with making false entries in reports to the Comptroller of the Currency in two counts; that the defendants were tried on said indictment at Hugo in the month of May, 1925, but the trial resulted in a mistrial because of the disagreement of the jury; that the grand jury of this court again investigated the acts and conduct of these defendants in connection with the management and operation of the Liberty National Bank of Tulsa, Oklahoma, in May, 1925, and found and returned, on May 7, 1925, an indictment against the defendant A. E. Lewis charging the said defendant with embezzlement of the moneys, funds and credits of the Liberty National Bank in thirteen counts, and found and returned an indictment against the defendant William Lloyd Lewis charging him with making false entries in reports to the Comptroller of the Currency in eight counts, and that these defendants had reasonable grounds to believe, and did believe, that there would be no further investigations of their acts and conduct in connection with the managment and operation of the Liberty National Bank.

These defendants further show to the court that the matters and things herein set forth tend to, and do, prejudice

them and their rights in this, that during the last three years there have been many bank failures, both state and national, in the territorial jurisdiction of the Eastern District of Oklahoma as the same now exists, and that a great number of citizens have sustained losses either as depositors or stockholders in national and state banks in the said territory, and that because of said bank failures and said losses there exists in the mind and conscience of many citizens in the counties now constituting the Eastern District of Oklahoma a bias and prejudice against officers of banks and other individuals charged with violating state and national banking laws, and these defendants believe and therefore state that many of the citizens whose names were in the jury box at the time the grand jury returning this indictment was drawn, had sustained financial losses either as depositors or stockholders in national or state banks that had failed, and by reason thereof are biased and prejudiced against any person charged with violating the national or state banking laws; that during the past three years there have been but few bank failures in the ten counties which were formerly within the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma, and which, since the 16th day of February, 1925, have been a part of the Northern District of Oklahoma, to-wit, the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa and Washington, and that but few citizens have sustained losses as depositors or stockholders in national or state banks, and that there does not exist in the minds of the citizens of said last named counties any bias or prejudice against officers or individuals charged with violating state or national banking laws, or at least such bias and prejudice is not so intense as in the Eastern District of Oklahoma as the same now exists, but is very much milder and much less pronounced.

And these defendants further show to the court that by reason of the secrecy in the drawing of the grand jury that returned this indictment and the impossibility of ascertaining their names prior to the 23rd day of June, 1925, and by reason of these defendants not having been notified and not knowing that their case would be investigated by said grand jury, these defendants had no opportunity to investigate or inquire into the qualification of the individual members of said grand jury, or to inquire into the bias and prejudice of said persons in regard to violations of the national banking laws, and had no opportunity prior to the returning of this indictment to challenge their competency.

These defendants therefore charge that said indictment

for these reasons is illegal and should be quashed and dismissed and this cause abated.

DAVIDSON & WILLIAMS,
Attorneys for Defendants.

State of Oklahoma,
County of Tulsa—ss.

The affiant, William Lloyd Lewis, being first duly sworn, states under oath that he is one of the defendants in the above styled cause; that he has read the foregoing motion and plea in abatement and knows the contents thereof and that the statements therein contained are true, as he verily believes.

WILLIAM LLOYD LEWIS,

Subscribed and sworn to before me this 14th day of July, 1925. Richard Perry, Notary Public. (Seal) My commission expires January 26, 1926.

Be It Remembered, that at a special July term at Muskogee, on this 20th day of July, 1925, the above entitled and numbered cause came on for hearing before the Honorable Franklin E. Kennamer, United States District Judge for the Eastern District of Oklahoma, at Muskogee, in said district, whereupon the following proceedings were had and done, to-wit:

Nugent Dodds, Esq., Special Assistant Attorney General, of Washington, D. C.;

Frank Lee, Esq., U. S. District Attorney for the Eastern District of Oklahoma, of Muskogee, Oklahoma; and

John M. Goldesberry, Esq., U. S. District Attorney for the Northern District of Oklahoma, of Tulsa, Oklahoma,

Attorneys for the Government.

Messrs. Davidson & Williams, of Tulsa, Oklahoma;

W. Shelly Rogers, Esq., of Tulsa, Oklahoma; and,

George B. Schwabe, Esq., of Tulsa, Oklahoma,

Attorneys for the defendant.

Whereupon, said cause came on for hearing upon the objections of the defendants to Judge Kennamer sitting as trial judge.

Mr. Davidson: It is conceded that prior to the 16th day of February, 1925, the Honorable R. L. Williams was senior judge of the old Eastern District of Oklahoma, and the Hon-

orable Franklin E. Kennamer was the junior judge of that district.

Mr. Davidson: Now, we desire to offer in evidence on this motion the order of the Honorable Kimbrough Stone assigning your honor to the Eastern District of Oklahoma.

The Court: It may be admitted.

Mr. Davidson: And also the order of your honor calling this special term.

The Court: Yes, sir.

Mr. Davidson: And also the order of the senior judge of the Circuit Court of Appeals dividing the Eastern District into divisions, and dividing the business between your honor and Judge Williams prior to the 16th day of February, 1925.

The Court: It may be admitted.

Mr. Davidson: It is admitted that the Northern District of Oklahoma was organized——

The Court: The court, you mean?

Mr. Davidson: Yes, the court for the Northern District of Oklahoma, was organized on the 1st day of April, 1925.

Mr. Dodds: I think that is correct.

(Thereupon the questions raised in said objection to Judge Kennamer sitting herein were argued to the court by counsel for the defendants and the Government.)

The Court: Objection overruled, and exceptions saved.

Mr. Davidson: Each of the defendants except to your honor's ruling.

(Said exhibits above offered and introduced being respectively in words and figures as follows:

United States Circuit Court of Appeals,
Eighth Circuit.

St. Paul, Minn., June 29, 1925.

Hon. W. V. McClure,
Clerk of U. S. District Court,
Muskogee, Oklahoma.

Dear Sir: I enclose herewith assignment of Judge Kennamer to the Eastern District of Oklahoma.

Very truly yours,
KIMBROUGH STONE.

United States of America,

Eighth Circuit.

In my judgment the public interest require the designation and appointment of a district judge of this circuit to hold and assist in holding the District Court of the United States for the Eastern District of Oklahoma in place or in aid of the district judge of that district.

I do, therefore, by these presents, designate and appoint the Honorable Franklin E. Kennamer, United States District Judge for the Northern District of Oklahoma, to hold or assist in holding the District Court of the United States in and for the several divisions of the Eastern District of Oklahoma at the times and places appointed by law for holding said court from this date until January 1, 1927, in place or in aid of the Honorable R. L. Williams, United States District Judge for the said Eastern District of Oklahoma.

Witness my hand this 29th day of June, A. D. 1925.

KIMBROUGH STONE,
Senior Circuit Judge.

The above assignment is made without intending to determine the present jurisdiction of either Judge R. L. Williams or Judge Franklin E. Kennamer in the former Eastern District of Oklahoma but to remove all question of the jurisdiction of either judge to dispose of causes and matters filed therein before the organization of the Northern District of Oklahoma.

(Endorsement:) Filed Jun. 3, 1925. W. V. McClure, Clerk U. S. District Court.

In the United States District Court for the Eastern District of Oklahoma.

Order Directing Special Term.

It appearing that the accumulation of business in this district is of such a nature and volume as to require that a special term of this court be held at Muskogee, Oklahoma, beginning on the 20th day of July, 1925, at 9:00 o'clock A.M.;

It Is Therefore Ordered, that a special term of this court be held at Muskogee, in said district, beginning on Monday, July 20, 1925, at 9:00 o'clock A.M., for the transaction of any business which might be transacted at a regular term, and to continue until adjourned by the court.

It Is Further Ordered, that the spreading of this order upon the court records shall be deemed sufficient notice of such special term.

F. E. KENNAMER,
District Judge.

(Endorsement:) Filed Jul. 16, 1925. W. V. McClure, Clerk U. S. District Court.

In the United States District Corut of the Eastern District of Oklahoma—In the matter of the division of business and the assignment of cases for trial in this district:

Whereas, Honorable R. L. Williams and Honorable F. E. Kennamer, the United States district judges for this district, do not agree upon the division of business and the assignment of cases for trial in this district and have submitted to the undersigned, as the senior United States Circuit Judge of the Eighth Judicial Circuit, the question of such division;

It Is Hereby Ordered, pursuant to the provisions of section 23 of the Judicial Code, U. S. Compiled Statutes, Compact edition, Sec. 990, that, for the purpose of dividing the judicial business, powers and duties of the judges of this district, the district is divided into two divisions called the First Division and the Second Division.

The First Division includes the counties of Nowata, Craig, Ottawa, Mayes and Delaware, the judicial business from which is tributary to this court at Vinita; the counties of Wagoner, Cherokee, Adair, Okmulgee, Muskogee, Sequoyah, McIntosh and Haskell, the judicial business from which is tributary to this court at Muskogee; the counties of Hughes, Pittsburg, Latimer, LeFlore and Atoka, the judicial business from which is tributary to this court at McAlester; and the counties of Choctaw, Pushmataha and McCurtain, the judicial business from which is tributary to this court at Hugo.

The Second Division includes the counties of Washington, Rogers, Creek and Tulsa, the judicial business from which is tributary to this court at Tulsa; the counties of Okfuskee, Seminole, Pontotoc, Coal and Johnston, the judicial business from which is tributary to this court at Ada; the counties of Garvin, Murray, Carter, Love, Marshall and Bryan, the judicial business from which is tributary to this court at Ardmore; and the counties of McLain, Grady, Stephens and Jefferson, the judicial business from which is tributary to this court at Chickasha.

It is further ordered that all the judicial business of this court, and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decision, and all the judicial business that shall arise in or come from the territory in the First Division on and after the date of this order be, and it is hereby exclusively, assigned to Honorable R. L. Williams. And, because the offices and records of the United States marshal and the United States district attorney are at Muskogee and it has been the practice to hold the sessions of the grand jury for the entire district at Muskogee, the judicial business for the entire district of convening and presiding over the grand jury and of directing its course, of receiving informations, indictments and pleas of guilty, and pronouncing sentences on pleas of guilty, and of arraigning defendants, taking their pleas and allowing bail before hearing or trial, is assigned to Honorable R. L. Williams. But the argument of law questions and the trial of criminal cases on motions, demurrers and pleas shall be had in the division in which the offense is charged to have been committed and before the judge to whom the judicial work of that division is generally assigned.

It is further ordered that, except as to the portion of the judicial business in the Second Division relating to the grand jury, the filing of informations, the arraigning of defendants, the taking of pleas of guilty, pronouncing sentences thereon, etc., assigned to Honorable R. L. Williams in the preceding paragraph, all the judicial business of this court and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decision, and all the judicial business that shall arise or come from the territory in the Second Division on and after the date of this order is hereby exclusively assigned to Honorable F. E. Kennamer.

It is further ordered that, unless and until otherwise ordered by the judge to whom the judicial work of the division in which any county is situated, the cases and issues arising in or coming from such county shall be and hereby are assigned for hearing and trial to the court town to which such county is heretofore in this order declared tributary.

July 23, 1924. WALTER H. SANBORN,
Senior United States Circuit Judge,
Eighth Judicial Circuit.

(Endorsements:) In the United States District Court for the Eastern District of Oklahoma.—In the matter of the division of business and the assignment of cases for trial in this

district.—Order of Hon. Walter H. Sanborn, Senior U. S. Circuit Judge, Eighth Judicial Circuit. July 23, 1924. Filed Jul. 25, 1924. W. V. McClure, Clerk U. S. District Court.

Whereupon, on the 20th day of July, A. D. 1925, said cause came on for hearing on motion of the defendants to dismiss the indictment because the court has no jurisdiction.

Mr. Davidson: I take it that it may be conceded that on the hearing on this motion, as on the other, that the court for the Eastern District of Oklahoma was organized on the 1st day of April, 1925.

The Court: The same admissions may be considered.

The Court: You don't intend to transfer this case to the Northern District?

Mr. Davidson: We haven't moved to transfer to the Northern District.

The Court: It is not the purpose of this motion to claim your right to try the case in the Northern District?

Mr. Davidson: So far as go in this motion we object to being tried in the Eastern District as it now exists.

The Court: I want to go further with you. It isn't your purpose to claim your right to try the case in the Northern District?

Mr. Davidson: No, but it is our purpose to claim our right to be tried, if anywhere, in the old Eastern District at the time the crime was committed. We don't think the Eastern District as it now exists, or the Northern District as it now exists, has jurisdiction to try this case, but if any district has jurisdiction it is the old Eastern District in its exact condition at the time the offense was committed.

The Court: All right, I see.

Mr. Davidson: Now we want to offer in evidence on this motion the order of court calling this special term of court.

The Court: It may be agreed that the other stipulations on the other motion may be considered.

Mr. Davidson: That is all right.

Mr. Davidson: I want to get in the record here the order made back in January, I think it was, the 22nd of January, calling a special term of the court at Muskogee, and also show that that term of court has been recessed, on the 14th of July, until the 28th of September.

The Court: You may introduce that, just what the record shows.

Mr. Davidson: We ask that it be marked as an exhibit.

(Thereupon the instrument referred to was marked defendants' Exhibit No. 1.)

Mr. Lee: In connection with that, I ask the order calling the special term for this date be introduced.

Mr. Goldesberry: We ask the record show at this time, if your honor please, that there has been no motion or application filed on the part of the defendants to transfer the case to the Northern District.

The Court: Well, that is admitted.

Mr. Davidson: Yes, that is admitted. I take it, it may be conceded Judge Williams recessed that special term on the 14th of July until the 28th of September.

Mr. Dodds: If the clerk's records so show.

The Court: Yes, you may introduce the record in reference to that matter, and it may be considered in evidence.

Mr. Davidson: We offer in evidence, if your honor please, the journal of the court on page 121 of the Muskogee criminal minute book on April 14, 1925, showing the convening of this special March term of the court at Muskogee, and on the 14th of July, 1925, the order of the court shown on page 122 of the book recessing the court until September 28, 1925, at 9:30 o'clock A.M.

The Court: The motion challenging the jurisdiction of the court based upon the ground that the presiding judge now sits as an assigned judge of the Eastern District. I don't believe it tenable in this: That I don't believe that there is a new Eastern District, but that the Eastern District is the same Eastern District as was established on the date that the Northern District was created with the exception of ten counties that were detached and placed in the Northern District. I believe that the Eastern District with all its officers, including the marshal, district attorney and judges, are still authorized to conduct court in the Eastern District as it formerly existed before the ten counties were detached, and proceed with the disposition and trial of any cases where the crimes were committed prior to the establishment of the Northern District. I believe the District Court of the Eastern District of Oklahoma has jurisdiction of this alleged crime in this indictment, the indictment having been returned prior to the creation of the Northern District. The motion challenging the jurisdiction of the court will be overruled and exceptions allowed.

Mr. Davidson: To which each of the defendants except, if your honor please.

Mr. Davidson: I would like to know, and I would like to have this go in the record, whether or not we are being put upon trial in the Eastern District of Oklahoma as it exists under this Act of February 16, 1925, or in the Eastern District of Oklahoma as it existed prior to the passage of the Act of February 16, 1925?

The Court: Well, as I said, I don't conceive of any difference in the District Court of the Eastern District of Oklahoma prior to the passage of the act creating the Northern District, and the District Court of the Eastern District of Oklahoma subsequent to the passage of the act other than ten counties have been detached from the Eastern District, but the court as a court is the same court and the same jurisdiction and powers that it had prior to the passage of the act creating the Northern District with the exception that its territorial limits or territorial jurisdiction have been limited to the extent of the ten counties detached.

Mr. Davidson: Then I would like to ask this, your honor: Are we being tried in the Eastern District in its restricted territorial jurisdiction?

The Court: I am not passing on that question now; as to their right to a jury and where it comes from. I am simply holding this case is properly triable in the Eastern District under the Judicial Code. Now you have argued, Mr. Davidson, a question that goes to the right of selecting a jury, what kind of a jury they are to be tried before. I say I am not passing on that question at this time. I simply hold the District Court of the Eastern District has a right to try this case under the Judicial Code.

Mr. Davidson: Well, we desire to except to the court's interpretation of the Act of February 16, 1925, as to the identity of the court as it now exists and as it existed prior to the passage of that act.

The Court: All right.

(The exhibits offered and introduced upon the hearing of said motion are in the words and figures following, respectively, as follows:)

Defendant Exhibit No. 1.

In the District Court of the United States for the Eastern District of Oklahoma.

Order Directing Special Term.

It appearing that the accumulation of business in this district is of such a nature and volume as to require that a special term of this court be held at Muskogee, Oklahoma, beginning on the 3rd day of March, 1925, at 9 o'clock A.M.

It Is Therefore Ordered, that a special term of this court be held at Muskogee, in said District, beginning on the 3rd day of March, 1925, at 9 o'clock A.M. for the transaction of any business which might be transacted at a special term, and to continue until adjourned by the court.

It Is Further Ordered, that the spreading of this order upon the records shall be deemed sufficient notice of such special term.

R. L. WILLIAMS, Judge.

Filed Jan. 22-1925. W. V. McClure, Clerk U. S. District Court.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of order of court directing a special term of Court at Muskogee, Oklahoma, on March 3rd, 1925, as the same appears of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said district, this 14th day of July, 1925.

W. V. McCLURE, Clerk,

(Seal) By ELLIS QUIETT, Deputy Clerk.

(Page 1 of Muskogee Criminal Minute Book showing a session of the special March 1925 term, being an exhibit offered in evidence on hearing on motions on July 20, 1925.)

On this 14th day of April, 1925, the District Court of the United States for the Eastern District of Oklahoma, sitting in special March session, at Muskogee, met pursuant to recess, Hon. R. L. Williams, judge, present and presiding, the following proceedings were had, to-wit:

(Page 122 of Muskogee Criminal Minute Book showing recess of court until September 28, 1925, being an exhibit offered in evidence on hearing on motion on July 20, 1925:)

On this 14th day of July, 1925, the District Court of the United States for the Eastern District of Oklahoma, sitting in special March session at Muskogee, met pursuant to recess, Hon. R. L. Williams, judge, present and presiding, the following proceedings were had, to-wit:

Court ordered recessed to Sept. 28, 1925, at 9:30 A.M.

Be It Remembered, that at said special July term at Muskogee on the 20th, day of July, 1925, the motion of defendant to quash and dismiss the indictment in this case came on for hearing and the following proceedings were had:

Whereupon, motions filed by the defendants in cases Nos. 9191, 9192 and 9346 came on for hearing before the court.

Mr. Davidson: Now we desire to present similar motions in the other three cases.

The Court: Now the first motion is the same as filed in the other case?

Mr. Davidson: Yes, sir, and let us have the same record as was made in the other case.

The Court: Yes, the same record will be made. Now let that motion be overruled and exceptions allowed.

The Court: Now the next motion is to quash the indictment?

Mr. Davidson: Yes, sir.

W. V. McCLURE, called as a witness, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Davidson.

Q. Mr. McClure, you are the W. V. McClure who is the clerk of the United States District Court for the Eastern District of Oklahoma? A. Yes, sir.

Q. When was the grand jury panel drawn that returned indictments Nos. 9191 and 9192 against Allie E. Lewis and William Lloyd Lewis? A. Is that the last?

Q. That is the one in May.

A. Is that the last grand jury? I will have to look up the record, I don't remember the date.

Q. I wish you would find and be able to testify to that. It was on the 7th of April, is when it was. The indictment was returned on the 7th of May?

A. I think that was the 7th of April, I won't be positive.

Q. It was drawn on April 7th. When was the grand jury panel drawn, Mr. McClure, that returned the indictment on May 7, 1925, in 9191 and 9192?

A. That was drawn April 7, 1925.

Q. That was drawn on the same day then that the names from the ten counties originally in the Eastern District and now in the Northern District were withdrawn from the jury box? A. Yes, sir.

Q. Were the names from those ten counties withdrawn from the jury box before that grand jury was drawn?

A. Yes, sir.

Q. Now that jury box from which that grand jury was drawn had been filled by you and the jury commissioner in October, 1924, had it not? A. Yes, sir.

Q. And how many names had been put in the box at that time? A. Something over eleven hundred.

Q. Were those names distributed over the entire forty counties then in the Eastern District? A. They were.

Q. Names from the ten counties formerly in the Eastern District, then in the Eastern District and which have since been put in the Northern District, were they in that jury box?

A. Yes, sir.

Q. As well as the other counties in the then Eastern District at that time? A. Yes, sir.

Q. Why were these names from these ten counties withdrawn from this jury box by you and the jury commissioner on the 7th of April, 1925?

A. For the reason we didn't want to draw jurors from a district other than the Eastern District.

Q. In other words, you wanted to provide a jury box for the Eastern District of Oklahoma as it existed territorially since the Act of February 16, 1925?

A. I think it was since the organization of the Northern District.

Q. The drawing was after the organization of the Northern District? A. Yes, sir.

Q. Mr. McClure, I have a certified copy here of the venire for that grand jury, and of the order of court for the drawing of it, and there is attached to the certified copy of the venire a list of the grand jurors sworn and empaneled as grand jurors, and state whether or not that is a correct list of the grand jurors empaneled at that term of the court and which returned the two indictments, Nos. 9191 and 9192?

A. I couldn't from just reading this list. It has been certified to and I assume it has been checked against the record.

Q. The certificate there doesn't say anything about that list; that is the reason I am asking you about it?

A. I will have to go check it and see.

Mr. Davidson: If your honor please, we offer in evidence these certified copies of the order ordering the drawing of the grand jury, and the venire for the grand jury, including the sheet attached thereto purporting to be a list of the jurors who were empaneled.

The Court: All right, let them be admitted.

Mr. Davidson: And we ask that these be marked exhibits in each of the three cases, 9191, 9192 and 9346.

Mr. Davidson: If your honor please, we also offer in evidence certified copy of the order for the drawing of the grand jury to return indictment No. 9346 and a certified copy of the venire for that jury, and a certified list of the jurors who were empaneled as that grand jury.

The Court: All right, they may be admitted.

A. That list is correct.

Q. Mr. McClure, was the grand jury panel from which the grand jury was constituted that returned the indictment in No. 9346 against Allie E. Lewis and William Lloyd Lewis on June 23, 1925, drawn from the same jury box as the preceding grand jury? A. Yes, sir.

Q. And the one from which the names from these ten counties had been withdrawn? A. Yes, sir.

Q. And the drawing of that grand jury was made on what date, if you have the record there?

A. It was made June 1, 1925.

Q. On June 1, 1925? A. Yes, sir.

Q. That now was after all names from the ten counties formerly in the Eastern District and now in the Northern District had been withdrawn from the jury box on the 7th of April? A. Yes, sir.

Q. And at the time of the drawing of this last jury panel were there any names in the jury box from any of these ten counties? A. No, sir, they were not.

Q. Mr. McClure, I will ask you whether or not prior to the drawing of the grand jury panels that returned indictments 9191, 9192 and 9346, you and the jury commissioner and the marshal had any instructions from Judge Williams about keeping secret the list of grand and petit jurors until the day they were ordered to appear in court on which they were empaneled?

A. Yes, sir, we did. The marshal didn't have anything to do with it. I believe he did notify the marshal, too, he wasn't to give out the information.

Q. What were your instructions on that?

A. Not to give out the names until the jury had been empaneled.

Q. And were they permitted to make a return of the venire facias before the day on which the jury was empaneled?

A. I don't recall. Sometimes they make it before and sometimes they don't.

Q. If they make it before, do you let anybody know who is on the jury list?

A. Not until the day they are empaneled.

Q. Those were your instructions from Judge Williams?

A. Yes, sir.

Q. These instructions were given long before either one of these grand jury panels were drawn? A. Yes, sir.

Q. Did you follow the instructions? A. Yes, sir.

Q. Did you keep secret the names of the grand jury panel that returned indictments 9191 and 9192 until the 4th of May, 1925? A. Yes, sir.

Q Did you keep secret the names of the grand jury panel that returned indictment 9346, which was returned on June 23, until the 22nd day of June, 1925, the day on which the jury was empaneled?

A. I always did it; I presume that I did; I don't know of anybody asking about it.

Q. Where were those juries drawn, Mr. McClure?

A. The jury that reported on the 22nd was drawn June 1st.

Q. Where? A. Here.

Q. In the clerk's office? A. Yes, sir.

Q. Where was the grand jury that reported on May 4th drawn, in the clerk's office? A. In the clerk's office.

Q. In the drawing of the jury panel on April 7th, and the drawing of the jury panel on June 1, 1925, were the names called aloud in the clerk's office when they were drawn?

A. Why, we just called them back and forth to each other as we would draw them.

Q. Was anybody present?

A. Well, there was a girl in there. I remember searching the records.

Q. A girl that belongs to your office?

A. No, she doesn't belong to my office.

Q. Was any record made of the names of either one of those grand jurors before they reported and were empaneled?

A. What do you mean by record?

Q. Any record on your record books accessible to the public, Mr. McClure?

A. No, they were not accessible to the public. The record writer kept it back there and she writes them up in the record, but she is always two or three months behind with the record.

Q. You keep secret the list?

A. Yes, sir, until the day they are empaneled.

Q. And don't permit anybody to know it? A. No, sir.

Q. And you did that at the instructions of Judge Williams, who was the judge of this district? A. Yes, sir.

Q. I will ask you, Mr. McClure, if the court had any rules for the drawing of juries? A. Yes, sir.

Q. I hand you a certified copy of an order of the court made on the 9th of December, 1916, with reference to the drawing of juries, and ask you to state whether or not those are the rules that have been operative ever since they were adopted? A. No, sir, this is not the rule.

Q. The record shows——

A. The rules of Judge Campbell in 1917, a later rule than this.

Q. Have you got a copy of it? A. I think so.

Mr. Davidson: We offer in evidence, if your honor please, this certified copy of these rules.

Mr. Lee: If the court please, he says that is not the rules.

The Court: Yes, he says that is not the rule, and let's wait and see what he has.

Mr. Davidson: All right, your honor.

The Court: Now, did I understand you to say that is not the rule of the court at this time?

A. No, sir, this other order of court sets that aside, all former rules.

The Court: I see, all right.

Q. I will ask you, Mr. McClure, to produce the order of court that you have reference to made in 1917? A. Yes, sir.

Q. Where do you find that recorded order?

A. In criminal and miscellaneous journal No. 10, at page 246.

Q. I will ask you to read that into the record, please?

A. "Jurors ordered for jury drawing"——

The Court: Cannot it be agreed to be admitted?

Mr. Davidson: Yes, your honor.

The Court: All right, it may be admitted.

Mr. Davidson: It is the order with reference to drawing of jurors found on page 246 of journal No. 10.

Mr. Davidson: Now, we offer in evidence, if your honor please, the rules adopted by this order of December 9, 1916, which is Defendants' Exibit No. 5.

The Court: I don't think it is material. It is reflected by this later order.

Mr. Davidson: All right, we offer it in evidence, and except to the court's ruling in refusing to admit it.

The Court: All right.

Mr. Davidson: I believe that is all.

Cross Examination by Mr. Lee.

Q. Mr. McClure, the jury was drawn in your office, was it, the clerk's office? A. Yes, sir.

Q. Publicly drawn? A. Yes, sir.

Q. No parties around there, or anybody excluded?

A. No, sir, they were not, either of the times.

Q. And when the names were drawn from the box they were called out?

A. Yes, sir, he calls his names to me and I call my names to him.

Q. And they were then put down publicly there in your office? A. Yes, sir.

Examination by the Court.

Q. Now Mr. McClure, this instruction of Judge Williams was that merely not to deliver to anybody a list of the jurors if they called for them?

A. Yes, sir, I can tell you the history of it, judge

Q. All right?

A. Some yars ago they had some bribery of a jury, and I always understood, and the court has always understood, Judge Campbell established that precedent in the court not to furnish the names until they were empaneled and put under the admonition of the court. When they were trying those whiskey cases from Tulsa they got out and bribed the jury before the jury was empaneled, and on that account they put this rule into effect.

Q. But your drawing was public?

A. Absolutely, yes, sir.

Q. You didn't tell anybody to get out or get away?

A. No, sir. I told anybody that wanted to, to come in.

Q. Do you remember anybody calling on you for a list of the jury?

A. Mr. Davidson there came to me for a list of the jury.

Q. I mean the grand jury?

A. I think it was the first grand jury. Wasn't that the one you wanted to see?

Mr. Davidson: Yes, I wanted all of them.

Q. I am speaking of these two grand juries that returned the indictments in these three last cases, two at one time, two in May and one in June?

A. Well, I don't think he ever asked me but one time to see the jury, and the court told him that as soon as that jury was empaneled down there at Hugo he could come in here and get the names of those jurors, and he did and I gave them to him.

The Court: That is all.

Re-Direct Examination by Mr. Davidson.

Q. Now that Mr. McClure, was before this grand jury was drawn that returned these indictments in May, wasn't it?

A. We had so many in there I can't keep them all in my mind. That was before this last grand jury, yes.

Q. Mr. McClure, haven't I been trying to get the list of these grand and petit jurors ever since this thing started, and haven't the clerk's office and the judge refused to let me have them, except the day the jury was empaneled.

A. I think this last one, you did get.

Q. This one drawn on the 16th of July?

A. No, wasn't that the other jury? You were in there, you were present when we drew the last jury, and the time before that you were down here and came to me and I wouldn't give it to you, and you went to see the court, and the court said you could have it, and I furnished you with a copy of it and furnished Mr. Lee a copy at the same time.

Q. The court wouldn't let me have it here the day I was here, but could get it the day they were empaneled at Hugo?

A. That was the jury that tried them at Hugo.

Q. And I didn't get that one until the morning they were empaneled?

A. That is true.

Q. And the court and the clerk's office told me of the rule not to permit the names of petit and grand jurors to be made public until the day on which they were empaneled?

A Yes, sir.

Q And I was advised of that back before either one of these indictments that were returned in May, or the indictment returned in June?

A. I don't think that you ever heard, I don't know that you did or didn't, but the first indictment that was filed against them, you didn't come down here until after that indictment was found against them.

Q. I am not asking you about that, but I was told before this indictment was returned about this rule of court?

A. Well, I don't know about that.

Mr. Davidson: That is all.

Cross Examination by Mr. Dodds.

Q. Mr. Davidson didn't present himself there at the time the grand jurors were drawn? You never refused anybody the right to appear at a drawing?

A. No, sir.

Q. And you never had any orders to refuse anybody the right to be there at the drawing of the jury?

A. No, sir. I received orders not to furnish them a list of

the jury. I told Mr. Davidson he could come and see a jury drawn.

Q. You knew that was a public drawing under the law?

A. Yes, sir.

Q. And you were ready at all times to do that, to let in the public if they asked permission to come in?

A. I never had anybody ask to come in. Mr. Davidson was the only one.

Q. No one never asked and no one was never refused by you? A. No, sir.

Mr. Dodds: That is all.

Re-Direct Examination by Mr. Davidson.

Q. Mr. McClure, I will ask you if I didn't ask you the privilege of being present at the drawing of the petit jury panel that was to report at Ardmore on the 20th; wasn't I in the office on the 3rd day of July and you told me that jury was to be drawn that morning, and I asked to be present, and you said yes, sure. I will be glad to have you; you told me that?

A. Yes, sir.

Q. Didn't I say to you then I had the utmost confidence in the jury commissioner and clerk, but I wanted to be present to get a list of the jury? A. Yes, sir.

Q. And didn't you tell me it wouldn't do me any good if I was present, I couldn't get the names of the jury?

A. Yes, sir.

Q. I said to you then, the names would be called aloug and I could get the list, and you told me they would not be called aloud? A. Yes, sir.

Mr. Davidson: That is all.

Re-Cross Examination by Mr. Lee.

Q. You didn't have anything to do with reference to this grand jury?

A. I don't know as he specified the grand jury; he was asking about the jury that was going to try these cases.

Q. To report at Ardmore on the 20th?

A. Yes, sir. He didn't say anything about the grand jury.

The Court: That was the panel that was set aside?

A. Yes, sir.

The Court: You told him you wouldn't give him a list?

A. Yes, sir.

Re-Direct Examination by Mr. Davidson.

Q. And these instructions applied to both grand and petit jurors?

A. Applied to all jurors.

Q. Ever since 1917?

A. Ever since I have been in the court.

Q. Ever since you have been in the court?

A. Yes, sir.

Mr. Davidson: That is all.

(Witness excused.)

Mr. Davidson: If your honor please, I want to be certain we get in this case this order calling the special Mar. term, and which was recessed from time to time, because that is the time at which all these indictments were returned.

The Court: All right.

Mr. Davidson: And that term was recessed from time to time until the 14th of July, 1925, when it was recessed until the 28th of September, 1925, and that the three indictments, 9191, 9192 and 9346 were all returned at that special term of court called back in January, the March term, but it was called in January, and that this record be made in all three of these cases, if your honor please, 9191, 9192 and 9346.

The Court: Is it your contention that this drawing was a secret drawing?

Mr. Davidson: That is our contention, your honor.

Mr. Davidson: The motion to quash, if your honor please, is verified in each of these three cases, and we want the record to show that the verified motions to quash are offered in evidence in each of these three cases.

The Court: All right.

Mr. Davidson: I believe that is all the evidence, if your honor please.

Defendant, Exhibit No. 2.

"In the United States District Court for the Eastern District of Oklahoma.

Order Quashing Petit Jury Panel for the Special January, 1925, Term of Court at Ardmore, Heretofore Summoned to Appear in Said Court at Ardmore, Oklahoma, on the 20th Day of July, 1925.

Whereas, it appears to the court that the panel of petit

jurors heretofore summoned to appear at Ardmore, Oklahoma, at the Special January, 1925, term at said place, on the 20th day of July, 1925, was so drawn that approximately one-third of the entire panel reside in the City of Ardmore; and,

Whereas, many of the other jurors on said panel reside in counties immediately adjoining; and,

Whereas, it appears to the court that the drawing of said jury was in other respects irregular; and,

Whereas, it appears to the court that the convenience of witnesses and economy of public funds renders it expedient to try the several causes heretofore designated to be tried at Ardmore, Oklamoma, commencing on the 20th day of July, 1925, be tried at Muskogee, Oklahoma, instead of Ardmore.

It is hereby ordered, upon the court's own motion, that the panel of petit jurors so heretofore drawn be, and the same is hereby, quashed and set aside, and that the marshal of this court forthwith so notify the said panel of petit jurors, so heretofore drawn.

Dated at Muskogee, Oklahoma, the 16th day of July, 1925.

F. E. KENNAMER,
District Judge."

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of Order quashing the petit jury panel for the special January 1925, term of court to be held in Ardmore, Oklahoma.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said District, this 16th day of July, 1925.

W. V. McCLURE, Clerk,
(Seal) By R. H. MAUS, Deputy Clerk.

Defendant, Exhibit No. 3, 9346.

In the United States District Court for the Eastern District of Oklahoma.

Muskogee, Saturday, May 30th, 1925.

Now on this 30th day of May, 1925, this court met in Special Session pursuant to recess, Present and presiding, Honorable R. L. Williams, Judge.

Order.

It is ordered that the Jury Commissioner and the Clerk of the court draw 23 grand jurors and 3 alternate grand jurors to appear at Muskogee, on June 22, 1925, at 9 A. M.

Defendant, Exhibit No. 4, 9346.

Writ of Venire for Alternative Grand Jury.

The United States of America,
Eastern District of Oklahoma—ss.

The President of the United States of America. To the Marshal of the Eastern District of Oklahoma, Greeting:

We command you to summon without delay:

W. F. Lowler, Quinton, Okla.

H. A. King, Quinton, Okla.

Frank Strauss, Stilwell, Okla.

to be and appear before our District Court of the United States within and for the District aforesaid, at the court rooms in the City of Muskogee, Oklahoma, on Monday, June 22, 1925, at nine o'clock A. M., then and there to serve as Alternate Grand Jurors for and during the Special March, 1925, term of said court, and not depart the court without leave thereof.

Hereof fail not, and have then and there this writ with your proceedings thereon.

Witness the Honorable R. L. Williams, Judge of the United States District Court for the Eastern District of Oklahoma, and the seal of said court at Muskogee in said District, this 2nd day of June, 1925, and the 149th year of the Independence of the United States of America.

W. V. McCLURE, Clerk.

Filed June 22, 1925.

United States Marshal's Return.

I hereby certify and return that I received the within writ of venire for Alternate Grand Jurors on the 2nd day of June, 1925, and that I have executed the same by mailing register summons to all, return receipts have been received.

HENRY F. COOPER,
United States Marshall,
By E. H. HUBBARD,
Deputy.

Muskogee, Oklahoma, June 20, 1925.

Writ of Venire for Grand [].

The United States of America,
Eastern District of Oklahoma—ss.

The President of the United States of America.

To the Marshal of the Eastern District of Oklahoma, Greeting:

We command you to summon without delay,

G. C. Cummong, Stigler, Okla.
Cecil E. Caldwell, Allen Okla.
M. S. Collins, Spiro, Okla.
F. L. Greegan, Henryetta, Okla.
W. J. Coffman, Ada, Okla.
J. R. Dexter, Ardmore, Okla.
C. H. Dexter, Beggs, Okla., R. F. D. #1.
C. E. Dudley, Antlers, Okla.
Elmer Hale, McAlester, Okla.
W. B. Fears, Stigler, Okla.
J. C. Fore, Wewoka, Okla.
M. P. Emback, Holdenville, Okla.
A. P. Harris, McAlister, Okla.
Dan Holmes, McAlester, Okla.
H. G. Hancock, McAlester, Okla.
Harry Hite, Beggs, Okla.
J. B. Pope, Heavener, Okla.
S. F. Russell, Holdenville, Okla.
C. H. Rives, Ada, Okla.
Arthur Straley, Ardmore, Okla.
James C. Shelton, Quinton, Okla.
J. H. Wharton, McAlester, Okla.
Wallace Colvard, Wilburton, Okla.

to be and appear before our District Court of the United States within and for the District aforesaid, at the court rooms in the City of Muskogee, Oklahoma, on Monday, June 22, 1925, at nine o'clock A. M., then and there to serve as grand jurors for and during the special March, 1925, term of said court, and not depart the court without leave thereof.

Hereof fail not, and have then and there this writ with your proceedings thereon.

Witness the Honorable R. L. Williams, Judge of the

United States District Court for the Eastern District of Oklahoma, and the seal of said court, at Muskogee, in said District, this 1st day of June, 1925, and the 149th year of the independence of the United States of America.

W. V. McCLURE, Clerk.

Filed June 22, 1925.

United States Marshal's Return.

I hereby certify and return that I received the within writ of venire at Muskogee, Oklahoma, on the 1st day of June, and that I have executed that same by mailing register summons to all persons named therein return receipts have been received from all.

HENRY F. COOPER,
United States Marshal.

By E. H. HUBBARD,
Deputy.

Muskogee, Oklahoma, June 20th, 1925.

June 22, 1925.

The following grand jurors are sworn and empaneled as grand jury for the term:

Cecil E. Caldwell, Allen,
M. S. Collins,
F. L. Greegan,
W. J. Coffman,
C. H. Dexter,
C. E. Dudley,
W. B. Fears,
Dan Holmes,
H. G. Hancock,
Harry Hite,
J. B. Pope,
S. F. Russell,
C. H. River,
James C. Shelton,
J. H. Wharton,
Wallace Colvard,
W. L. Fowler,
H. A. King,
Frank Strauss.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full, and correct copy of Writ of Venire for Grand Jury, and list of jurymen who served, as shown from the records in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said District, this 24th, day of June, 1925.

W. V. McCLURE, Clerk,
By DOROTHY B. LIPSCOMB
(Seal) Deputy Clerk.

Defendant, Exhibit No. 5, 9191-9192.

Order for Jury Drawing.

Now on this 9th day of December, 1916, at Muskogee, Oklahoma, it is hereby ordered that the names of the grand and petit jurors of this court shall be publicly drawn by the clerk, or one of his deputies, and the jury commissioner from a box, which shall be retained in the custody of the clerk, such drawing to be in accordance with this rule, hereby adopted to govern such drawing .

The box shall be of metal and have two locks and keys of different design, one kept to be retained by the clerk and one by the jury commissioner. After each placing of names in the box, or drawing of names, the box shall be closed and securely locked with both keys and the keys retained as above ordered.

As often as may be necessary in order that the box shall at no time at the beginnig of a drawing contain less than three hundred names, the jury commissioner and the clerk shall meet at the clerks office and publicly, in said office, place in said box, alternately, one at a time, without reference to party or religious affiliations the names of residents of this district, selected from the body of the district, possessing the qualifications of jurors prescribed in section 275 of the Judicial Code of March 3, 1911.

Whenever the court or the judge thereof shall order a grand or petit jury drawn for service at any term of court, the clerk shall enter such order of record, and notify the jury commissioner of the time of such drawing, and the jury commissioner shall attend at the clerk's office, at such time, and thereupon after the jury box shall have been thoroughly shak-

en, the said commissioner and the said clerk or one of his deputies, shall in the presence of each other, in the clerk's office, publicly open said jury box and after placing same in a position that neither can see into it, shall publicly draw therefrom, alternately, reading each name aloud, one at a time, until the number of jurors required in the order of court shall have been drawn.

Upon the completion of such drawing the clerk shall enter the names drawn of record and shall issue venire facias for such jury or jurors, returnable at such time and place as the court or judge shall in his order direct, and said venire facias shall be served and returned by the marshal, as provided by law.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full, and correct copy of the order for jury drawing, as recorded in criminal and miscellaneous journal #10, at page 7.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee in said District, this 14th day of July, 1925.

W. V. McCLURE, Clerk,
By R. H. MAUSS,
(Seal) Deputy Clerk.

The motion to quash and dismiss the indictment was by the court overruled, to which ruling of the court the defendant at the time excepted.

Be It Remembered, That thereafter on the 5th day of August, A. D. 1925, defendants Allie E. Lewis and William Lloyd Lewis filed in the above entitled cause in said court their affidavit of personal bias and prejudice against the Hon. Franklin E. Kennamer, which affidavit is in words and figures as follows, to-wit:

"In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants. —No. 9346.

Affidavit of Personal Bias and Prejudice Against the Hon. Franklin E. Kennamer.

The affiants, Allie E. Lewis and William Lloyd Lewis respectfully represents and states that they verily believe and

charge that his Honor, Judge Franklin E. Kennamer, has a personal bias and prejudice against them and in favor of the Government, by reason of which said Judge is unable to impartially exercise his functions as Judge in this case; that by reason of said personal bias and prejudice this defendant cannot receive a fair and impartial trial before him. The grounds for the defendant's beliefs are the following facts, to-wit:

The defendants state upon information and belief that the Honorable Franklin E. Kennamer, in the City of Tulsa, Oklahoma, after the organization of the United States District Court for the Northern District of Oklahoma, created and organized pursuant to the Act of Congress of February 16, 1925, made addresses before certain civic clubs and churches of that city on the subject of law enforcement; that in all these addresses he told his audiences, in substance, and through them the general public, that he intended to bear down with heavy hands on all offenders against Federal Criminal Laws; and that during the course of his address before one of said clubs, namely, the Kiwanis Club, on or about the 13th day of April, 1925, he stated that the higher the law violator's collar and the whiter his shirt the longer his sentence would be in his court, and that the longer his list of witnesses the heavier his sentence would be.

The defendants further state that the Hon. R. L. Williams was the Presiding Judge on the first trial of this case at Hugo, Oklahoma, beginning May 16, 1925, and ending on the 27th day of May, 1925; that the jury on said first trial was unable to reach an agreement after being out approximately thirty-four hours, and the jury was discharged and a mis-trial declared; that the Hon. Franklin E. Kennamer was the Presiding Judge on the second trial of this case at Muskogee, Oklahoma, beginning July 20, 1925, and ending July 28th, 1925. He further states on information and belief that on the first trial the jury was nearly evenly divided; that on the second trial the jury stood ten to two for conviction on the first count, and on all other counts in the indictment the standing of the jury ranged from nine to three down to seven to five in favor of conviction; that prior to the commencement of said second trial the Hon. R. L. Williams, who is Judge of the United States District Court for the Eastern District of Oklahoma, tendered the Hon. Franklin E. Kennamer the use of his chambers in the Federal Building at Muskogee, Oklahoma, during the trial of this cause, but that the Hon. Franklin E. Kennamer declined to use the same, saying that he preferred to use the United States District Attorney's office as his chamber, and that he did throughout said trial use the District At-

torney's office in the Federal Building at Muskogee, Oklahoma, as his chambers; that he associated in public and in private throughout said trial with Nugent Dodds, Mr. Frank Lee, Mr. John M. Goldesberry and Joseph A. Genau, Mr. Dodds being an Assistant United States Attorney General assigned to the prosecution of this case, Mr. Frank Lee being the United States District Attorney for the Eastern District of Oklahoma, Mr. John M. Goldesberry being the United States District Attorney for the Northern District of Oklahoma, who had been invited to, and did, assist in the prosecution of this case, both at Hugo and at Muskogee, and Mr. Joseph A. Genau being the special accountant out of the Department of Justice assigned to said case, and who worked up the evidence in the case and who was one of the Government's chief witnesses on the trial; that Judge Kennamer during said trial frequently walked from the Federal Building to the Severs Hotel, where he was stopping during the trial, and from the Severs Hotel to the Federal Building with one or more of the Government's attorneys; that Judge Kennamer frequently from time to time held private conferences with the Government's attorneys in regard to said case, both in the District Attorney's office and in their rooms at the hotel, and that he and attorneys Dodds and Goldesberry visited with each other in their rooms at the hotel far into the night; that Judge Kennamer prepared his instructions in said case in the office of the District Attorney with the counsel and advice of said Government Attorneys, without the presence or consent of the defendant or any of their counsel; that Judge Kennamer's association with the Government's attorneys during the trial of said cause was so pronounced that it created unfavorable comment on the part of many people.

Defendant further states on information and belief that on Sunday, July 26, 1925, Judge Kennamer said to Cal Wheeler, a deputy clerk in this court, that "if the defendants are innocent in this case then that boy I sentenced to a year and a half in the Federal Penitentiary from Ada ought to be brought back from the penitentiary and given one thousand dollars to boot".

The defendants further state that on Monday morning, July 27th, 1925, at about nine o'clock, the jury was brought in and the foreman asked by the court if he had any report to make, whereupon the foreman said that the jury was unable to agree, and the court gave the jury further instructions over the defendant's objection, although the foreman stated that they did not want any further instructions from the court; and shortly before noon of the same day the jury again reported that it was unable to agree and was sent back for fur-

ther deliberation by the court; at about four o'clock in the afternoon of the same day the jury again reported that it could not agree and the court gave the jury further instructions. Just before six o'clock P. M. of the same day the jury was called into the court room to be sent out for supper, and the court observed one of the jurors E. A. Edmondson, and one of the defendants, William Lloyd Lewis, smile at each other one time, and in open court in the presence of the jury severely censured the juror and told him his conduct was in contempt of court, and then sent the jury out for further consideration of their verdict, and after the jury had retired the court said to Mr. Lewis in open court that he would take the matter up between him and Mr. Edmondson in the morning. On the following morning at about nine o'clock, July 28, 1925, the court called the jury in and upon being advised by the foreman in response to his question that the jury was unable to reach a verdict, discharged the jury from further consideration of the case, and ordered juror Edmondson and defendant William Lloyd Lewis into the custody of the United States Marshal pending the hearing of contempt charges against them. The court then ordered all the jurors except Mr. Edmondson to go back to the United States District Attorney's office for the purpose of an investigation, and the jurors were there questioned with reference to what juror Edmondson had said and done in the jury room, and as to how the jury voted on the different counts of the indictment; that the jurors were then brought back into the court room and several of them placed upon the witness stand, after being sworn, and were questioned by the United States District Attorney and by the court relative to the conduct of juror Edmondson and other jurors during the deliberations of the jury in the jury room. Upon the conclusion of said contempt hearings the court assessed a fine of five hundred dollars against the juror Edmondson and against the defendant William Lloyd Lewis and committed them to the custody of the Marshal until said fines were paid. That Judge Kennamer said from the bench before passing sentence on the juror Edmondson and the defendant William Lloyd Lewis that: "I am thoroughly convinced from the statements of the juror, Paul Harris, and one other juror whose name I do not recall at this time, in view of the overwhelming testimony introduced in this case, I might say testimony from witnesses whose reputation for truth and veracity is not challenged, the undisputed testimony of the records themselves, and the law as the court instructed the jury, that there has been a gross miscarriage of justice in this case, and that Mr Edmondson is wholly responsible for it." Whereas, in truth and in fact two jurors voted not guilty on the first count of the indictment, and the jurors stood on the other counts of the indictment submitted

to them in the ratio of from nine to three down to seven to five in favor of conviction; that juror Edmondson and juror Couch voted not guilty on every count in the indictment submitted to them.

The court further said at that time:

> "The Government has brought witnesses from foreign states, they have brought numerous witnesses, they have testified in the case. On many material and essential issues involved there was not any evidence arising to the dignity of testimony that contradicted their statements, still, the case is undecided, simply in my judgment, because a juror did violence to his oath."

The court also said at the same time in the same connection:

> "A single act of the nature committed by the juror would be enough to warrant the court in concluding the trial at the time such act was observed, with the consequent great public inconvenience and expense incident to a retrial of the cause. Any continuous course of conduct such as the court has himself observed, is so intolerable as to merit severe punishment in order that there may be no probable repetition thereof by this juror or by others upon whom the solemn obligation of a juror's oath may rest so lightly."

The court also said at the same time and in the same connection that he thought when leaving the court room on the night of July 27, 1925, that one year and one day in the penitentiary would be a very lenient sentence under the circumstances, and that he had his mind fully made up to fix a penitentiary sentence in punishment of the contempt; that the court did on the afternoon of July 28, 1925, announce that he would fix the punishment for juror Edmondson and defendant William Lloyd Lewis at sixty days in the city jail at Muskogee, Oklahoma, but before passing the sentence was advised that juror's Edmondson's wife was ill and reduced the sentence to a fine of five hundred dollars each against both the juror Edmondson and defendant William Lloyd Lewis. That after the court had indicated that he would sentence the juror Edmondson and defendant William Lloyd Lewis to imprisonment in the city jail of Muskogee, Oklahoma, for sixty days each, the court refused to allow an appeal to the Circuit Court of Appeals and refused to allow time to prepare and file a bill of exceptions, and refused to allow time in which to prepare and file a transcript of the record, and refused to allow bail pending the appeal, and announced that there was

no appeal allowable for a conviction for direct contempt, and that any relief from the court's sentence would have to be had from the Circuit Court of Appeals.

The defendants state that Judge Kennamer was extremely angry and incensed at the defendants, and himself said immediately before passing sentence in the contempt proceedings that he was very mad and when he observed what he denominated a signal conversation between the juror Edmondson and the defendant William Lloyd Lewis, and lost his patience right there and then; that the intense ill-feeling of Judge Kennamer toward the defendants was evidenced also by his manner and conduct and facial appearance during the contempt proceedings, and the defendant states that he believes and therefore charges that Judge Kennamer's intense anger toward the defendant William Lloyd Lewis continues yet without abatement and has extended to and included defendant Allie E. Lewis, and that by reason of this intense anger Judge Kennamer is utterly unable to give the defendant a fair and impartial trial in this case. The defendant further states that they demeaned themselves properly throughout the trial of this case and gave the court no cause to charge either of them with misconduct or to charge the defendant William Lloyd Lewis with engaging in a signal conversation with the juror Edmondson and gave the court no cause to assess a fine of five hundred dollars against them for contempt of court, or to charge him with contempt of court; that on the trial of the contempt proceedings the juror Edmondson and defendant William Lloyd Lewis each testified that they were not signalling to each other at all, but that they only smiled at each other, and then it was merely in salutation, and without any ulterior motive, and done innocently.

The defendants further state that on the 16th day of July, 1925, Judge Kennamer called a special term of the United States District Court for the Eastern District of Oklahoma, at Muskogee, Oklahoma, beginning July 20, 1925, for the purpose of trying this cause and certain other cases against these defendants; that said trial continued continuously from July 20, until July 28, 1925; that on the 28th day of July, 1925, the court discharged the jury in this cause and announced from the bench that neither this cause nor either of the other cases pending against these defendants would be tried immediately, and Mr. Dodds and Mr. Lee both in open court announced that the cases would be later set and the defendants given ample time to prepare for trial; that thereupon the defendant William Lloyd Lewis, believing said cases would not be reset until this fall, proceeded to Ashville, North Carolina, where

his children are, one of whom is sick and afflicted with a severe case of asthma, and was in Ashville, North Carolina, on the 1st day of August, 1925, when the court, without the defendants' consent and over their protest through their counsel of record, set this case and the other cases against these defendants for trial on the 10th day of August, 1925. The defendants' counsel were advised by Mr. Dodds by telephone on the afternoon of July 31, 1923, that he would move the court on August 1, 1925, at ten o'clock A.M., at Muskogee, to reset this case and the other cases against these defendants, but did not indicate what date he would ask for them to be reset; that defendants' counsel and defendant A. E. Lewis proceeded to Muskogee on the morning of August 1st, 1925, and appeared in court at ten o'clock; that Mr. Dodds asked in open court that all of these cases be assigned for trial on the 10th day of August, 1925; that defendants' counsel objected and protested against the setting of these cases at said time, but the court overruled his objections and protests and ordered the cases set for trial on August 10th, 1925, and ordered a jury of sixty men drawn from the jury box as a petit jury panel for the trial of said cases; that the defendant Allie E. Lewis and defendants' counsel, R. L. Davidson, were present at the drawing of said jury and immediately thereafter proceeded to the telegraph office and wired defendant William Lloyd Lewis at Ashville, North Carolina, to return immediately; that the said William Lloyd Lewis proceeded by the first train after receiving said telegram to return and reached Tulsa, Oklahoma, on Tuesday morning, August 4th, 1925; and that today, August 4th, 1925, is the earliest date possible upon which the defendants could make and file this affidavit.

That shortly after the drawing of the panel of sixty names from the jury box on August 1, 1925, and without the presence of either of the defendants in court and without the presence of any of their counsel, the court of its own motion quashed said jury and ordered a panel of sixty jurors to be drawn from that part of the Eastern District of Oklahoma composed of the counties of Muskogee, Okmulgee, Wagoner, Haskell, Cherokee, McIntosh, Coal, Atoka, Marshall, Choctaw, Adair, Sequoyah, Hughes, Pittsburg, Lattimer, LeFlore, Pontotoc, Johnson, Bryan, McCurtain and Pushmataha; that under said order nine counties of the present Eastern District of Oklahoma are excluded as well as the ten counties formerly belonging to the old Eastern District of Oklahoma, which are now a part of the Northern District of Oklahoma; that on the former trial of cause No. 8622 the court of its own motion quashed the first panel of forty names drawn and ordered the drawing of

a second panel of forty names from the entire body of the present Eastern District of Oklahoma; that the court in its investigation and hearing of the contempt charges in case No. 8622, Judge Kennamer and the United States District Attorney questioned the jurors as to alleged statements made by juror Edmondson during the deliberations of the jury in regard to following the court's instructions, and Judge Kennamer instructed the jury in that case shortly before he censured juror Edmondson in the presence of the jury for the alleged smiling between the juror Edmondson and the defendant William Lloyd Lewis, that it was their duty to follow the instructions of the court, right or wrong; that if the court was wrong there were higher courts to correct him; that the proceedings in the contempt hearing in case No. 8622 and the attitude of Judge Kennamer in regard thereto and his statements from the bench will tend to destroy the independence of the individual juror's own convictions and will prevent the defendant from having a fair and impartial verdict of the jury.

Defendants further state that juror Edmondson was not a member of the regular panel of jurors drawn from the jury box; that when the regular panel of jurors drawn from the jury box was exhausted in selecting the jury in cause No. 8622, the court ordered the marshal to summon nine talesmen to report back in court within one hour; that the defendants objected and protested against completing the jury from talesment and insisted that the additional jurors should be drawn from the jury box. The Government's attorneys objected to drawing the additional jurors from the jury box and insisted upon an open venire being issued for the additional nine prospective jurors; the defendants objected and excepted to the court's ruling in refusing to draw the additional jurors from the box and ordering them summoned as stated; that juror Edmondson was one of the nine talesmen so summoned from the City of Muskogee; that said nine talesmen reported in the court within an hour from the time the order was made; that the jury was completed on the same day the talesmen were summoned, and within a very short time after they had reported in court and the jury was under orders of the court kept together and placed in charge of two bailiffs, specially sworn for that purpose; that no one connected with the defense side of said cause ever communicated directly or indirectly in any way with juror Edmondson or juror Couch or with any other juror before they were accepted as jurors to try the case, or after.

ALLIE E. LEWIS,
WILLIAM LLOYD LEWIS.

State of Oklahoma,
City of Tulsa—ss.

The affiant[], Allie E. Lewis and William Lloyd Lewis, being duly sworn, say that they are the defendants in the above styled action; that they have read the foregoing affidavit and know the contents thereof; that said affidavit is true to the knowledge of the affiants except as to those matters stated therein on information and belief and as to those matters *he* believes it to be true.

ALLIE E. LEWIS.

Subscribed and sworn to before me this 5th day of August, 1925. Richard Perry, Notary Public. (Seal) My commission expires January 26, 1926.

The undersigned counsel of record for the defendant[] hereby certify that the foregoing affidavit and application are made in good faith.

DAVIDSON & WILLIAMS,
WM. S. ROGERS,
GEORGE B. SCHWABE.

(Indorsed upon said instrument appears:) Filed Aug. 5, 1925. W. V. McClure, Clerk of U. S. District Court.

And on the same day, to-wit, August 5, 1925, said defendants Allie E. Lewis and William Lloyd Lewis filed in said court in said cause their motion to have the making and filing of an affidavit of personal bias and prejudice against the Hon. Franklin E. Kennamer entered on the records of the court, and an authenticated copy of said order forthwith certified to the acting senior judge of the United States Circuit Court of the Appeals for the Eighth Circuit, which motion is in words and figures as follows, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, ... No. 9346.

Motion to Have the Making and Filing of an Affidavit of Personal Bias and Prejudice Against the Hon. Franklin E. Kennamer Entered on the Records of the Court and an Authenticated Copy of Said Order Forthwith Certified to the Acting Senior Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Comes now the defendant[], Allie E. Lewis and William Lloyd Lewis, and move the court to cause to be entered on the records of the court the fact that an affidavit of personal bias

and prejudice against the Hon. Franklin E. Kennamer has been made and filed in this cause, and that an authenticated copy of said order be forthwith certified to the acting senior judge of the Circuit Court of Appeals for the Eighth Circuit in accordance with sections 20 and 21 of the Judicial Code. That the undersigned counsel of record for the defendants certify that this application is made in good faith.

DAVIDSON & WILLIAMS,
WM. S. ROGERS,
GEORGE B. SCHWABE.

(Indorsed thereon appears:) Filed Aug. 5, 1925, W. V. McClure, Clerk U. S. District Court.

Be It Remembered, that thereafter, at the special July term at Muskogee, on the 10th day of August, A. D. 1925, the above entitled and numbered cause came on for hearing before the Honorable Franklin E. Kennamer, United States District Judge for the Eastern District of Oklahoma, at Muskogee, in said district, whereupon the following proceedings were had and done, to-wit:

Appearances:

Nugent Dodds, Esq., Special Assistant Attorney General, of Washington, D. C.;

Frank Lee, Esq., U. S. District Attorney for the Eastern District of Oklahoma, of Muskogee, Oklahoma;

John M. Goldesberry, Esq., U. S. District Attorney for the Northern District of Oklahoma, of Tulsa, Oklahoma,

Attorneys for the Government.

Messrs. Davidson & Williams, of Tulsa, Oklahoma, and W. Shelly Rogers, Esq., of Tulsa, Oklahoma,

Attorneys for the defendants.

Mr. Davidson: If your honor please, we have filed an affidavit of personal bias and prejudice against your honor, which we wish to present at this time.

The Court: Very well, I will hear you.

Mr. Davidson: The affidavits, your honor, have been drawn, as we conceive, in strict conformity with the statute, and in accordance with the holding of the Supreme Court of the United States in the case of Berger vs. United States, in which the case of making an affidavit of personal bias and prejudice went to the Supreme Court of the United States, in

that case, and the court in that case, the United States Supreme Court, held the affidavit sufficient to disqualify Judge Landis in that case. The court has no right under that decision and other decisions to question the facts set out in the affidavit of personal bias and prejudice. The court does have the right to pass upon the legal sufficiency of the affidavit, of whether or not the affidavit has been drawn in conformity with the provisions of the Judicial Code. As to the right of permitting the filing of these affidavits the Judicial Code provides that——

The Court: I think I am familiar with the Judicial Code.

Mr. Davidson: The Judicial Code provides that the defendants may file an affidavit for personal bias and prejudice against the trial judge, and that upon the filing of that affidavit the judge shall proceed no further in the case, but shall make the record and certification, and try to get another judge in the case, for the reason the judge is biased and prejudiced. The statute provides—the law is, the facts and reasons set out must reasonably tend to the conclusion that from those facts the judge may be personally biased and prejudiced against the defendant. The statute is enacted, if your honor please, for the purpose not only of insuring absolutely a fair and impartial trial in the case before judge who is free from any bias or prejudice, but also for the purpose of removing any suspicion of doubt as to whether or not the judge is free from any bias or prejudice. The thing that is most essential under our law is that the proceedings shall be so fair and impartial that there shall be no question as to the fact that the defendants will have a fair and impartial trial, both before a fair and impartial jury but before a fair and impartial judge, entirely free from any bias or prejudice, whatever.

Now, your honor, the facts that we have alleged in this affidavit are in substance this: That your honor throughout the trial of this case before associated with counsel for the Government; that your honor went from the court house to the hotel, and back from the hotel to the court house, in company with counsel for the Government; that you maintained your chambers in the district attorney's office throughout the trial; that you visited with counsel for the Government in the rooms at the hotel far into the night; that the instructions in the case were prepared by your honor in the district attorney's office with the assistance and advice and presence of Government counsel; that when this case was finally concluded and the jury discharged from further service in this case, your honor ordered an investigation in the district attorney's office of all the jurors except juror Edmondson, as to what

transpired in the jury room, and the deliberations of the jury relative to what Mr. Edmondson said and did in that case with reference to following the instructions of the court, and with reference to how the jurors voted during the deliberations in the jury room; that juror Edmondson and defendant Lloyd Lewis were by your honor ordered into the custody of the marshal pending that investigation; that that investigation was had; that after the investigation certain of the jurors were placed upon the stand here in contempt proceedings and required under oath to disclose how the jurors voted in their deliberations in this case, and to what juror Edmondson said and did with reference to your honor's instructions in that case; that your honor became intensely angry and mad; that your honor yourself said from the bench that you were very mad, and that you right there and then lost your patience. We also state in here that your honor from your appearance and conduct on the bench showed that you were mad and angry, and from the appearance of your honor from the bench and from your honor's sentence in that matter showed that your honor was intensely angry at the defendant Lloyd Lewis and juror Edmondson, and that angry and ill-feeling of your honor probably continues. To our mind, if your honor please, that is one reason that tends to show your honor should not sit in this case, but to make that plain, that in the interest of fairness and in the interest of the administration of justice in such a way that the public as well as the parties to the cause will feel that there is not any question but what they are having a fair and impartial trial, both before a fair and impartial jury and a judge. It is also set out in this affidavit that your honor said to Mr. Wheeler, one of the deputy court clerks here, that if these defendants were innocent in this case that a certain boy that your honor had sent to the penitentiary for a year and a half ought to be brought back and given a thousand dollars to boot.

The Court: Now, in that connection, do you expect to present Mr. Wheeler on that?

Mr. Davidson: Oh, no, your honor.

The Court: That is alleged on information and belief?

Mr. Davidson: Yes, sir, and the Supreme Court in the Berger case specifically holds these affidavits are sufficient. The other side has no right to question the facts alleged in these affidavits. The court must take them as true, and taking them as true, the question is whether or not the affidavit is sufficient. We think, if your honor please, there is not any question but what your honor under the circumstances in this case ought to withdraw from the trial of the case in order to

have another judge here to try this case. These affidavits are filed in each of these four cases.

The Court: Any statement from the Government?

Mr. Dodds: Just a brief statement, if your honor please; I wish to say this: That the Government considers, if your honor please, as a matter of judicial decision it is as much the duty of the court to continue to sit in the case if he is qualified as it is his duty to withdraw when he is not qualified; that is, that either is a matter of judicial duty. Now, I call your honor's attention to the fact that as to much of the matters alleged in the affidavit, saying nothing about their truth or falsity, but as to much of the matters alleged in the affidavit, the time set forth in the affidavit as to the time of the occurrence of the alleged matters, shows, if your honor please, as to those purported matters, the affidavit itself is far from being a timely filing of it, and that it is plainly the intent of the statute that the affidavit must be filed either ten days before the term, or, in case the term was of an unusual nature, as soon thereafter, of course, as it could be filed. Those matters are presumed to have been known, if there was any truth in them, by the defendants here long before; at the time of their occurrence, for example, because they could have no right to urge them if they had gone by the first ten days on the mere ground that they didn't know about them before; it would be a matter of diligence. Then, if your honor please, the matters that are alleged to have taken place since. I don't care to argue that to your honor at all. The proposition is so well founded and so well established that the court cannot be taken to task for anything that it does in the course of protecting the integrity of the court itself, more especially when such action is brought about by the misconduct of the defendants, otherwise it would put him always within the power of the defendant in a case to bring such a state of facts as would put the court in that position in order to allow the defendant to turn around and cause the court to reverse himself every time. And that in connection with the statement, if your honor please, that I don't believe myself that there is a statement of fact in the whole affidavit that shows the personal bias or prejudice which the law requires, and we take the position, both from the standpoint of time and the standpoint of the failure of the facts alleged to show the personal bias that the law contemplates, that the affidavit is wholly insufficient.

Mr. Davidson: If your honor please, on the question of time: This term of the court was originally called on the 16th day of July to begin on the 20th day of July, and we proceed-

ed immediately into the trial of this case, 8622, and that case continued until the 28th. On the 28th, when these contempt proceedings were had, and your honor announced from the bench at that time that these other cases would not be tried immediately, and called on both Mr. Dodds and Mr. Lee in regard to that matter, and your honor remembers your honor had first announced you would fix the punishment in this contempt at sitxy days in the city jail of Muskogee, that Mr. Dodds made the statement that the defendant would have plenty of time to serve his time in jail and prepare for the trial before these cases would be reset. Mr. Lee made the statement that the cases would be later reset and the defendants given ample notice and time to prepare for the trial. The next thing we knew was on the first day of August when these cases were reset for trial on the 10th day of August. As set out in this affidavit by Mr. Lloyd Lewis, believing that these cases would not be tried again until fall from the things he had heard in court, he proceeded to Ashville, North Carolina, to see his children, who were there and one of whom was sick, and that he was in North Carolina on the 1st day of August when these cases were reset, and was wired immediately to return, and he did return and got here on the 4th day of August, and these affidavits were immediately filed upon his return. And so far as the time is concerned, the statute provides it may be filed at least ten days before the time of trial, unless good cause is shown for filing out of that time. Now the affidavit has met the requirements of the statute in showing good cause why these affidavits were not filed prior to the time that they were.

The Court: All right, let me have the affidavit. With reference to this application for disqualification, it appears that these cases, No. 8622—I haven't the other numbers.

The Clerk: 9191, 9192 and 9346.

The Court: Yes—were first ordered set for trial by the court on July 6th at a special term of court which was then in session, or opened, at Ardmore, Oklahoma. Subsequent to the setting of the cases at Ardmore, on the 15th day of July, the matter came to the attention of the court that fifteen of the jurors of that panel of forty-five had been summoned from the City of Ardmore. The court came to Muskogee on the 16th day of July for the purpose of determining whether the jury panel so drawn should be quashed. After an investigation of the matter I quashed the panel, and it being called to the attention of the court that these cases, in fact nearly all the witnesses, which required a number of people residing in the City of Tulsa, the defendants residing in the City of Tul-

sa, it would be much more convenient and less expensive to the Government, it would be much more convenient for all parties interested in the cases and much less expense to the parties that the cases be transferred from Ardmore to Muskogee for trial, a distance of about sity-two miles from Tulsa to Muskogee, whereas if the cases were tried at Ardmore it would necessitate the witnesses and the parties traveling probably a distance of one hundred and forty-five miles. In the interest of economy and convenience to all the parties the court ordered the cases transferred from Ardmore, and ordered a special term of the court at Muskogee to be held commencing on the 20th day of July, when these cases would be taken up for trial. On the 20th of July case No. 8622 was called for trial, and the case proceeded with, which lasted until the 28th day of July.

When the court arrived at Muskogee to conduct this term of court the clerk of the court informed me that Judge Williams had quite a lot of work out on his desk, and while [] had no objections to me using his chambers, he didn't want his books and papers displaced during that time. Knowing that Judge Williams did not expect a term of court here at this time, I asked Mr. Lee for the use of one of his rooms during my stay here, as he had the use of several rooms in the Federal Building, and of course if it was agreeable to him for me to use one of his rooms, the room being accessible to the library in his office. I did use this room during that term of court, during the days of this trial.

As to the statement that the instructions given in the case were prepared in this room, and with the advice and the assistance of the district attorney's office, I simply have this to say: I prepared my instructions in this case, as I do in all cases; I dictated them to the court reporter. I did afford both the district attorney's office and counsel for the defendants an opportunity to present me any cases or authorities bearing upon the legal questions involved in the case, and I read many cases, some submitted by counsel for the defendant and some submitted by counsel for the Government, but the instructions were prepared just as I do all instructions in civil or criminal cases by dictating them to my court reporter, as I conceived the law to be, after an investigation of the authorities.

I don't believe the statement contained in the affidavit that I walked from the Federal Building to the hotel with counsel for the Government needs any explanation. I would walk with any reputable lawyer, whether he was counsel for

the Government or counsel for the defendant, in the course of my work I happened to fall in company with. I don't believe that there would be any presumption indul*ated* in that even a sworn officer of the court would attempt to do in any way influence the court in his official actions in reference to a case pending.

The further statement contained in the affidavit that I visited with Mr. Dodds in his rooms in the hotel is without foundation. I never was in his room, but in order to be perfectly frank and fair to counsel that made the statement, I will state that Mr. Dodds visited in my room a few times, as other counsel did, during my stay here, and I don't believe that it needs any further statement in reference to that matter.

In reference to the statement made in the affidavit that Mr. Chal Wheeler, deputy clerk of this court, it is alleged on information and belief that I made some statement to him about a case that had been tried at Ada. I want to state into the record that the alleged statement never was thought of by me, and I know that Mr. Wheeler will be glad to furnish counsel whatever the conversation was, and he advises me that counsel in this case have tried to get him to make an affidavit of that nature, which he refused to make. Mr. Wheeler is here and if counsel desires to examine him I will permit them to do so.

Mr. Davidson: I will say this, if your honor please, in that connection Mr. Wheeler told me the very identical language in the affidavit.

The Court: Just a minute until I finish this statement. As to the other matters alleged to have taken place on the conclusion of the other trial, there is a stenographic report of that statement, and the court is perfectly willing for it to be incorporated in this record. The court in good faith did what he conceived to be his imperative duty in order to vindicate the law and protect the integrity of the court and the orderly procedure of the trial of cases. It was done in an official way without reference to the personnel of any one connected with the transaction. I may further state that I never met the defendants, never knew them until they appeared in the trial of these cases. I never had any dealings of any kind with them, never was acquainted with them, and I know of no reason in my own mind, or any inference that may be drawn reasonably from the statements contained in the application that would tend to establish that I entertained the least feeling of bias or prejudice toward either of the defendants.

The matter occurring at the trial of the case before had to do with the discharge of my official duties in the course of a public trial, and as I stated at that time, and it appeared in the record, not a thing to me personally, but what I did was simply in vindication of the law and the protection of orderly procedure in the trial of cases.

The section of the Judicial Code referred to provides that an application for disqualification must be made within ten days before the term of the court, unless good cause is shown why it was not made sooner. On August first counsel and one of the defendants were present when the court ordered the cases reset for trial, and about the only objections made to resetting the cases for trial was probably the weather was a little hot for the trial of cases of this kind. No serious legal reason was offered why the cases should not be set for trial. A jury was ordered drawn, and the cases set for trial on this date. No information was given to the court that they desired another judge preside at the trial of these cases.

However, on last Tuesday evening, following the setting of these cases on Saturday, Mr. Davidson and Mr. Williams came to my chambers in the City of Tulsa and stated that they thought I ought not to preside in the trial of these cases on account of what had happened at the conclusion of the other trial. I advised Mr. Davidson then that I had no personal desire whatever to try these cases, and that if I could secure the services of another judge to be present here on this morning to preside and proceed with the trial of these cases I would be more than glad to do so. I wired Judge Youmans and stated to him the situation; that while I didn't feel I had any personal bias or prejudice in the least against the defendants, or was in any way disqualified, I would be glad if he would come over and try the case, if he could. He wired me it would be impossible for him to try them during this month. I advised Mr. Davidson of the wire Wednesday morning following the sending of the message by me on Tuesday night. Mr. Davidson stated to me that the cases ought to be continued, and I told him if Government counsel and he could agree on a continuance I had no personal objections to the cases being continued. He advised me he was going to Muskogee to confer with Mr. Dodds about the matter, and the next morning in the papers I read that an application had been filed on Wednesday evening asking me to disqualify. I think I obtained a copy of the affidavit Saturday morning.

However, on Thursday afternoon about three o'clock I sent to Judge Kimbrough Stone, acting senior judge for the Eighth Circuit, a telegram in which I advised him of the situa-

tion, and that if he could secure an available judge to be here I would be glad that he would do so and let him try the case. Judge Stone called me Saturday afternoon and advised me that counsel for the defendants had been to see him and asked for a writ of prohibition, but that he could secure Judge Scott of Iowa probably by Wednesday morning to proceed with the trial of these cases.

This application for disqualification could have been suggested to the court at least on Saturday, the day the cases were reset for trial. If it had been done at that time, I believe I could have had a judge here this morning to preside at this trial.

Having never been acquainted with the defendants, not knowing them personally at all until they appeared in court, I feel that if I was to certify to the senior circuit judge that I was disqualified to try these cases on account of personal bias and prejudice toward the defendants, I would certify to something that was absolutely untrue. I cannot conscientiously do it. For that reason, and the reasons herein stated, the application will be overruled and an exception allowed.

Mr. Davidson: The defendants and each of them except, if your honor please, in each case.

The Court: I want to make this further statement, Mr. Davidson; just let this come before the exception: In view of the fact that there is a jury of sixty men that have been notified to quit their private business and come here to serve at this term of court, numerous witnesses have been subpoenaed and are in attendance upon this court, I feel like it would be a grave injustice to all parties interested to delay the trial of this case. For that additional reason I cannot make the certification of the disqualification, and exception allowed.

Mr. Davidson: The defendants each except to the court's ruling in each one of these cases.

The Court: Yes.

Mr. Davidson: Now, if your honor please, we desire to file written objections to your honor sitting in these cases, which embody the same objections we raised before, and the additional objection that the filing of the affidavit of personal bias and prejudice disqualifies your honor.

The Court: In other words, you set up the same objections heretofore raised as to the jurisdiction, and in addition the affidavit of disqualification.

Mr. Davidson: Yes, sir.

The Court: You may file it.

Mr. Davidson: I want to say to the court, this is beside the question here—in accordance to what your honor said about my coming down to see Mr. Dodds; I did come down to see Mr. Dodds on that day, and submitted to Mr. Dodds the proposition that we had talked about, and he wouldn't agree to pass these cases for any length of time, for the purpose of getting another judge here to try this case, and that is the reason why we then proceeded to file the affidavit.

The Court: All right. Now let the objections be overruled and exceptions allowed.

Mr. Davidson: An exception to each defendant in each case.

(Said objections so referred to and filed being in words and figures as follows, to-wit:)

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Objection of the Defendant to the Hon. Franklin E. Kennamer Sitting as the Trial Judge in This Case.

Come now the defendants, Allie E. Lewis and William Lloyd Lewis, in the above-styled cause, and objected to the Hon. Franklin E. Kennamer sitting as trial judge in this case and objects to his hearing or passing upon any motion, demurrer or other pleading in this cause, and for grounds therefor say:

1. That prior to the 16th day of February, 1925, the Hon. R. L. Williams was the senior judge of the United States District Court for the Eastern iDstrict of Oklahoma as the same had existed prior to said date, and that the Hon. Franklin E. Kennamer was junior judge of the United States District Court for the Eastern District of Oklahoma as it existed prior to said date; that on the 16th day of February, 1925, the Congress of the United States, by an act approved on said date by the President of the United States, divided the State of Oklahoma into three judicial districts and thereby created the Northern, Eastern and Western Districts of Oklahoma; that said Act of Congress took effect on the 16th day of February, 1925, and under its terms the junior judge of the Eastern District of Oklahoma, to-wit, the Hon. Franklin E. Kennamer, was assigned to the Northern District of Oklahoma to hold said court in said district; and said Act of Congress further provided that the President, by and with the advice and consent of the Senate, shall appoint for said

Northern District of Oklahoma, a district judge upon the death, disability or retirement of the district judge, who by its terms was assigned to said Northern District, to-wit, the Hon. Franklin E. Kennamer; that under the terms of said Act of Congress the Hon. Franklin E. Kennamer has been by Congress assigned to the Northern District of Oklahoma until the death, disability or retirement of the said Franklin E. Kennamer, or until Congress itself shall revoke said assignment; that on the 29th day of June, 1925, the Hon. Kimbrough Stone, acting senior circuit judge of the United States Circuit Court of Appeals for the Eighth Circuit, by an order of that date, attempted to designate and appoint the Hon. Franklin E. Kennamer to hold or assist in holding the District Court of the United States in and for the several divisions of the Eastern District of Oklahoma at the times and places appointed by law for holding said court from that date until January 1, 1927, in place or in aid of the Hon. R. L. Williams, United States District Judge for the said Eastern District of Oklahoma. A true and correct copy of said order is attached hereto and made a part hereof and marked for identification defendants' "Exhibit A." That neither the Circuit Court of Appeals for the Eighth Circuit, nor any judge thereof, has any authority or power to revoke the congressional assignment of the Hon. Franklin E. Kennamer to the Northern District of Oklahoma, or to assign, designate or appoint the Hon. Franklin E. Kennamer to hold or assist in holding the District Court of the United States in and for any judicial district of the United States other than the Northern District of Oklahoma so long as his assignment to the Northern District by Congress shall remain in force; that by reason of these facts the Hon. Franklin E. Kennamer is without power or authority to act as district judge in the Eastern District of Oklahoma, as the same now exists, or as same existed prior to the 16th day of February, 1925.

2. That on the 5th day of August, 1925, defendants made and filed in this cause an affidavit of personal bias and prejudice on the part of Judge Kennamer against the defendants and in favor of the Government, which was certified by counsel of record as having been made in good faith; that said affidavit of personal bias and prejudice is legally sufficient to disqualify Judge Kennamer, and that Judge Kennamer has no power or authority to preside further in this cause.

DAVIDSON & WILLIAMS,
WM. S. ROGERS,
GEO. B. SCHWABE,
Attorneys for Defendants.

(Attached to said instrument appears the exhibit shown on this bill of exceptions, page 3.)

The foregoing is all the evidence heard by the court on the objections and motions and affidavits in this case.

Be It Remembered, that thereafter, and on the 20th day of August, 1925, the matter of a proper extension of time for the purpose of preparing and having settled bill of exceptions upon the objections and motions heard and passed upon by the court in this case at the special July term of the court at Muskog,ee, Oklahoma, came on for hearing, and the court having duly considered the same, made and entered an order granting the defendant thirty days within which to prepare and have settled his bill of exceptions herein on said objections and said motions.

Be It Further Remembered, that thereafter, and on the 12th day of September, A. D. 1925, the matter of a further extension of time for the purpose of preparing and having settled a bill of exceptions upon the objections and motions heard and passed upon by the court at the special July term, 1925, of the court at Muskogee, Oklahoma, came on for hearing, the court having duly heard the same, made and entered an order granting defendants an extension of thirty days within which to prepare and have settled their bill of exceptions herein upon said objections and said motions.

The undersigned, Frank Lee, United States District Attorney for the Eastern District of Oklahoma, for and on behalf of the United States of America, in the case of United States of America v. Allie E. Lewis and William Lloyd Lewis, Criminal No. 9346, does hereby accept service of the above and foregoing bill of exceptions in said entitled cause upon the objections and motions of the defendant[] heard and passed upon by the court at the special July, 1925, term of the court at Muskogee, Oklahoma, and do hereby agree that said bill of exceptions shall be approved, allowed and sustained and made a part of the record herein.

Dated this 10 day of October, 1925.

FRANK LEE,
United States District Attorney for the Eastern District of Oklahoma.

Now, on this the 12 day of October, 1925, the same being within the time heretofore allowed by the court within which

defendants might prepare and file and have settled their bill of exceptions on the objections and motions heard and passed upon by the court at the special July, 1925, term of the court at Muskogee, Oklahoma. the above and foregoing is tendered by the defendants as a bill of exceptions herein upon said objections and motions and is by the court examined and found to be a full, true and complete bill of exceptions herein.

It Is Therefore Ordered, that the above and foregoing bill of exceptions be and it is hereby settled as a full, complete and true bill of exceptions herein, and same is hereby ordered to be filed by the clerk of this court and to be made a part of the record herein.

F. E. KENNAMER, Judge.

Filed Oct. 12, 1925. W. V. McClure, Clerk.

(Caption omitted.)

Bill of Exceptions.

(No. 2.)

Be it remembered, that on the 9th day of January, 1926, the above styled cause was assigned for trial at Ardmore, Oklahoma, for the 19th day of January, 1926.

That thereafter the defendants, Allie E. Lewis and William Lloyd Lewis, did, on the 14th day of January, 1926, file with the clerk of the above entitled court in said cause a motion to quash the petit jury panel, drawn on December 3, 1925, from which a large part of the jury that returned the verdicts in the above styled cause was obtained; which said motion is in words and figures following, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346.

Motion to Quash Petit Jury Panel Drawn December 3, 1925.

Come now defendants, Allie E. Lewis and William Lloyd Lewis, and move the court to quash the petit jury panel for the regular Ardmore term of the United States District Court for the Eastern District of Oklahoma, drawn on the 3rd day of December, 1925, because the same is illegal and unlawful, and as grounds and reasons therefore, state:

1. That the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma at the time the offenses charged in the indictment are alleged to

have been committed, included the following counties of Oklahoma, and none other: Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Craig, Creek, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LaFlore, Love, Mayes, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Okfuskee, Okmulgee, Ottawa, Pittsburg, Pushmataha, Pontotoc, Rogers, Seminole, Stephens, Sequoyah, Tulsa, Wagoner and Washington; that at the time the offenses charged in the indictment in this case are alleged to have been committed, the territorial jurisdiction of the United States District Court for the Western District of Oklahoma included the following counties of Oklahoma, and none other: Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Osage, Pawnee, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward. That at the time the offenses charged in the indictment in this case are alleged to have been committed, the State of Oklahoma was divided into the Eastern and Western Districts, constituted as above set out; that by the terms of an Act of Congress approved by the President of the United States on the 16th day of February, 1925, and which then took effect the State of Oklahoma was divided into three judicial districts, and said act created the Northern, Eastern and Western Districts of Oklahoma; that under the terms of said act the territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington constitute the Northern District of Oklahoma; and the territory embraced on January 1, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, LaFlore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner constitute the Eastern District of Oklahoma; and the territory embraced on January 1, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward constitute the Western District of Oklahoma; that the Northern District of Oklahoma as so constituted was organized and became operative on April 1, 1925; that Tulsa County, in which the offenses charged in the indictment in this case are alleged to have been com-

mitted, was formerly a part of the Eastern District of Oklahoma; that under the terms and provisions of said Act of Congress of February 16, 1925, it became and since has been a part of the Northern District of Oklahoma; that the offenses with which the defendants are charged in the indictment in this case are alleged herein to have been committed by them in Tulsa County, Oklahoma, prior to the 16th day of February, 1925; that the jury panel drawn for the Ardmore term of the United States District Court for the Eastern District of Oklahoma as the same now exists was drawn on December 3, 1925, from the jury box of the United States District Court for the Eastern District of Oklahoma as the same now exists; that said jury box was filled on September 4, 1925, by W. V. McClure, as clerk, and Harry W. Gibson Jr., as jury commissioner of the United States District Court for the Eastern District of Oklahoma as it now exists with 935 names selected by said clerk and said jury commissioner from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as it now exists; that at the time said petit jury panel was drawn from said jury box the said jury box did not contain any names from the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa, or Washington; that said jury box did not then contain and does not now contain the names of persons from the entire territorial body of the Eastern District of Oklahoma as it existed at the time the offense charged in the indictment in this case are alleged to have been committed; that no order of court was made or entered directing the jurors constituting said petit jury panel to be returned from any particular part of the territory constituting the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925; that the only order ever made for the drawing of said petit jury panel was made by the Honorable Robert L. Williams, as judge of the Eastern District of Oklahoma as the same now exists, on the 3rd day of December, 1925. A certified copy of said order is attached hereto as Exhibit 1 and made a part hereof; that said order was a bench order and was never signed by Judge Williams.

That under the provisions of the Constitution of the United States the defendants are entitled to a trial by an impartial jury drawn from the entire territorial body of the district in which the offenses charged in the indictment in this case are alleged to have been committed, as the same existed at the time of the commission of said offense; that the jury box from which said petit jury panel was drawn is a jury box provided and constituted for the United States District Court

for the Eastern District of Oklahoma as the same now exists, and does not contain any names from the ten counties formerly a part of the Eastern District of Oklahoma and now a part of the Northern District of Oklahoma, and that said jury box is not a legally constituted jury box legally filled for the United States District Court for the Eastern District of Oklahoma as the same existed prior to the 16th day of February, 1925, and that said panel of jurors drawn December 3rd, 1925, for the Ardmore term of the United States District Court for the Eastern District of Oklahoma as the same now exists, was drawn from the jury box for the United States District Court for the Eastern District of Oklahoma as the same now exists, is an illegal and unlawful panel of petit jurors for the trial of any offense, and particularly the offenses charged in this indictment alleged to have been committed in the old United States District Court for the Eastern District of Oklahoma as the same existed prior to February 16, 1925.

These defendants further show to the court that the matters and things herein set forth tend to, and do, prejudice them and their rights in this, that during the last three years there have been many bank failures, both state and national, in the territorial jurisdiction of the Eastern District of Oklahoma as the same now exists, and that a great number of citizens have sustained losses either as depositors or stockholders in national and state banks in said territory, and that because of said bank failures and said losses there exists in the mind and conscience of many citizens in the counties now constituting the Eastern District of Oklahoma a bias and prejudice against officers of banks and other individuals charged with violating state and national banking laws, and these defendants believe and therefore state that many of the citizens whose names were in the jury box at the time said petit jury was drawn had sustained financial losses either as depositors or stockholders in national or state banks that had failed, and by reason thereof are biased and prejudiced against any person charged with violating the national or state banking laws; that during the past three years there have been but few failures in the ten counties which were formerly within the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma, and which since the 16th day of February, 1925, have been a part of the Northern District of Oklahoma, to-wit, the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa, and Washington, and that but few citizens have sustained losses as depositors or stockholders in national or state banks, and that there does not exist in the minds of the citizens of said last named counties any bias or prejudice against officers or individuals charged

with violating state or national banking laws, or at least such bias and prejudice is not so intense as in the Eastern District of Oklahoma as the same now exists, but is very much milder and much less pronounced.

These defendants further show that the petit jury panel so drawn on the 3rd day of December, 1925, are as follows:

To Appear Ardmore, January 18, 1926.

Issue Dec. 3rd and returned Dec. 29, 1925.

1. Tams Burney, Marietta, Love County, Store Clerk;
2. I. C. Buford, Wade, Bryan County, Farmer;
3. A. C. Byrd, Madill, Marshall County, Real estate;
4. J. A. Boucher, Antlers, Pushmataha County, Merchant.
5. Frank Bishop, Hodgens, Farmer;
6. Middleton Cooley, Eufaula, McIntosh County, Farmer;
7. George W. Clement, Hastings, Jefferson County, Farmer;
8. J. E. Craddock, Frisco, Pontotoc County, Farmer,
9. R. P. Crockett, Coalgate, Coal County, Bookkeeper;
10. Fred A. Chapman, Ardmore, Carter County, Real estate;
11. C. X. Edwards, McCurtain, Haskell County, Banker;
12. Fred Enas, Marietta, Love County, Merchant;
13. E. W. Fowler, Washington, McClain, Farmer;
14. Hugh Forehand, Lindsey, Garvin County, Real estate;
15. W. J. Fitts, Atoka, County, Cafe operator;
16. W. D. Gibson, Paules Valley, Garvin County, Garage;
17. J. E. Harris, Ada, Pontotoc County, Merchant;
18. S. V. Hackworth, Valliard,, McCurtain County, Banker;
19. Joseph Klien, McAlester, Pittsburg County, Merchant;
20. J. B. Lorgent, Sulphur, Murray County, Groceryman;
21. Ed Lee, Gore, Sequoyah County, Farmer;
22. Alonzo Miller, Tishmingo, Johnston County, Abstracter;
23. L. H. Million, Wagoner, Wagoner County, Farmer;
24. E. C. Pyle, Pauls Valley, Garvin County, Poultryman;

25. J. D. Rives, Holdenville, Hughes County, Real estate;
26. Joe Sessions, Garvin, McCurtain County, Merchant;
27. H. E. Yonkers, Henryetta, Okmulgee County, Ry. Agent.

J. R. Autry, Weleetka, Nort. Dist.

Frank Sowers, Sharp,

W. F. Wise, McAlester. No service.

That no juryman was drawn from any of the ten counties, formerly a part of the Eastern District of Oklahoma and now a part of the Northern District of Oklahoma, and that said panel of petit jurors is composed entirely of citizens of the United States District Court for the Eastern District of Oklahoma as the same now exists, exclusive of the ten counties formerly belonging to said district but which have been a part of the Northern District since February 16, 1925.

These defendants therefore charge that said petit jury panel for these reasons is illegal and unlawful and should be quashed.

DAVIDSON & WILLIAMS,
Attorneys for Defendants.

State of Oklahoma.
County of Tulsa—ss.

The affiant William Lloyd Lewis being first duly sworn upon oath says that he is one of the defendants in the above entitled action; that he has read the foregoing motion to quash petit jury panel and knows the contents thereof, and that the statements therein contained are true, as he verily believes.

WILLIAM LLOYD LEWIS.

Subscribed and sworn to before me this 14th day of January, 1926. Richard Perry, Notary Public. My commission expires January 26, 1926.

Muskogee, Wednesday, December 2, 1925.

Now, on this 2nd day of December, 1925, the District Court of the United States for the Eastern District of Oklahoma, met in Special Session, pursuant to recess, present, and presiding, Honorable R. L. Williams, Judge.

Order.

It is ordered by the court that the Clerk and Jury Commissioner of this court draw the names of 30 persons, from the jury box for petit jurors to appear at Ardmore, Oklahoma, on January 18, 1926, at 9:00 of said date.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full, and correct copy of the order made by Honorable R. L. Williams, on December 2, 1925, for petit jurors to appear at Ardmore, January 18, 1926. Criminal Docket 26, page 490.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said District, this 13 day of Jan. 1926.

W. V. McCLURE, Clerk,
By DOROTHY B. LIPSCOMB,
(Seal) Deputy Clerk.

Exhibit 1.

Endorsed on Back of Motion to Quash Petit Jury Panel Drawn December 3, 1925:

Filed Jan. 14, 1926. W. V. McClure, Clerk U. S. District Court.

That, thereafter, on the 21st day of January, 1926, the Government filed in the above styled cause its Demurrer to said motion; which demurred is in words and figures following, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346 Cr.

Demurrer to Motion to Quash Petit Jury Panel Drawn December 3, 1925.

Comes now the United States by and through Nugent Dodds, Special Assistant to the Attorney General, and Frank Lee, United States Attorney, and demurs to the motion to quash the petit jury panel drawn December 3rd, 1925, and filed in this court on January 14th, 1926, for the following reasons:

That the said motion sets forth no valid reason in law or equity why the court should quash the petit jury panel drawn December 3rd, 1925, or as to why said panel should not constitute a part of the jury to be empaneled as jurors to try said case.

NUGENT DODDS,
Special Assistant to the Attorney General.
FRANK LEE,
United States Attorney.

Endorsed on back of said Demurrer:

Filed Jan. 21, 1926. W. V. McClure, Clerk, U. S. District Court.

That, thereupon, on the said 21st day of January, 1926, the court sustained said demurrer, to which ruling of the court the defendants and each of them at the time duly excepted. The order of the court sustaining said demurrer is in words and figures following, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—The United States of America, Plaintiff, vs Allie E. Lewis and William Lloyd Lewis, Defendants. —No. 9346 Criminal.

Order.

The motion of the defendants to quash the petit jury panel came on for hearing on this, the 21st day of January, 1926, and the Government filed its demurrer to the motion of the defendants to quash the Petit Jury Panel; and the said demurrer coming on for hearing, and the Court having heard the argument of counsel on both sides, is of the opinion, and hereby orders, that said demurrer be, and the same is hereby, sustained.

To which ruling of the court the defendants, and each of them, duly excepts, this 21st day of January, 1926.

JOHN C. POLLOCK,
Judge

Filed Jan. 21, 1926. W. V. McClure, Clerk, U. S. District Court.

Be it remembered that upon the same day, to-wit, the 21st day of January, 1926, at the regular October term of the present United States District Court for the Eastern District of Oklahoma, sitting at Ardmore, Oklahoma, the following proceedings were had in the above styled cause, to-wit:

The Court: Gentlemen of the bar, as I understand it, I am here for the purpose of hearing one single matter, as you are all probably informed. Is the Government ready to go forward in that matter?

Mr. Dodds: The Government is ready, if your Honor please.

The Court: What do you say for the defendant?

Mr. Davidson: If your Honor please, there have been

some several preliminary motions, a motion to quash indictment, and a demurrer to the indictment, that have been passed on by Judge Kennamer pro formo at a former term of the court.

The Court: By "pro formo," you do not mean without a hearing?

Mr Davidson: I think so, if your Honor please; that they would be taken up and be considered more thoroughly on the trial of the case. He overruled the demurrer and the motion to quash, and an order to that effect was made.

The Court: Of course, you would not expect me, coming here this morning, to take up and review or change that ruling.

Mr. Davidson: We don't want to ask your Honor to do that. We want your Honor to permit us to withdraw the plea for the purpose of filing certain matters.

The Court: No, that would be unseemly for me to rule again upon a matter that has been taken up and ruled upon, so I feel bound by that decision.

Mr. Davidson: I realize, if your Honor please, it is within your discretion.

The Court: Of course, you do, so with that out of the way, is the defense ready to go forward?

Mr. Davidson: We are, if your Honor please.

The Court: I understand the Government is.

Mr. Dodds: The Government is, if your Honor please.

The Court: Very Well.

Mr. Davidson: There is one matter, if your Honor please, before the jury is called. We have a motion here that is to quash this jury panel that we would like to have passed on before the jury is called.

The Court: Very well; that has not been ruled.

Mr. Davidson: That has not been ruled.

The Court: All right, I will hear it.

Mr. Davidson: That has been filed since this jury panel was drawn for this term.

The Court: What is the ground for the motion?

Mr. Davidson: The ground of the motion, if your Honor please, is this: That this jury is drawn from the jury box of the present Eastern District of Oklahoma that was filled in September of this year with jurors names from the territorial limits of the present Eastern District and this jury is drawn from that jury box and is composed of jurors entirely from the limits of the present Eastern District; that there were

no names in the jury box from the ten counties of the old Eastern District, which are now part of the Northern District, and in which—one of which counties the offense charged in this indictment was committed. It is our contention that under this Act of Congress, Oklahoma is divided into three certain districts—Judicial Districts. That Act created the present Eastern District and the present Western District in the same terms and with the same force and effect as it did the Northern District; that it continued the old districts as they formerly existed for the purpose of trying and disposing of cases which had occurred prior to the creation of these three new districts. The language of the Act itself does that by reference to the general statute, Section 821 of the Code, which provides that offenses that were committed before the change shall be tried as if the Act had not been passed.

The Court: Exuse me, but I have had occasion to examine some matters arising out of the creation of this district and some questions as to jurisdiction and I am rather familiar with it.

Mr. Davidson: I think, if your Honor please, I am going to cite your Honor's opinion in support of our contention on this question, your opinion in the Head case, which was a habeas corpus case.

The Court: I was not ruling on this question then.

Mr. Davidson: No, but your Honor in that case said, in that opinion, that the defendant in the case could not be indicted, prosecuted, or tried in the Northern District of Oklahoma.

The Court: No, the offense had been committed before the district was created. That is perfectly plain.

Mr. Davidson: That is perfectly plain. Now, by the same reasoning, no offense committed before this change could be tried in the present Eastern District of Oklahoma.

The Court: No, I think not.

Mr. Davidson: Well, suppose you change the names now; let's say that the Northern District was called the Eastern District in the Act itself, and this Eastern District was called the Southern District, then if that were true, the offense could not be tried in the Eastern District of Oklahoma.

The Court: No. I think the effect of that law was to carve out another district from the two existing districts, and of course an offense committed in the Eastern District before the Northern District was created would have to be tried in the Eastern District.

Mr. Davidson: As it existed before the Act was passed.

The Court: I don't—Well, it could not——

Mr. Davidson: Well, if your Honor please, that is just the very point I want to present to your Honor on this motion. Now, there was a case arose in California, this kind of a case: they had the District of California and an Act was passed dividing that state into two districts, one was called the Southern District of California and the other was called the Northern District of California. An offense was committed before the Act was passed but was tried—an indictment was found, I believe, before—maybe it was afterwards, —anyway it was found in the District of California, the original district, and they contended there that it could not be prosecuted in the original District of California because that had been determined and ceased upon the passage of that Act, but the courts there held that the Act itself had continued the old district in its original territorial integrity for the purpose of trying offenses that had been committed before the Act was passed.

The Court: Did here, too.

Mr. Davidson: It did here. All right, then, the only distinction, if your Honor please, between the Eastern District now and the Eastern District as it existed at the time this offense was committed is the territorial ten counties. Now, unless we are given a trial from the body of the original district and the order in this case is a general order, there is no order here directing the drawing of this jury from any particular counties of the district, but it is just a general order to draw for this term of court. As a matter of fact, it is drawn from a limited jurisdiction,—jurisdiction of the present Eastern District, and it is not drawn from the jurisdiction of the old Eastern District at the time this offense was committed.

The Court: Well, that could be done by order anyhow.

Mr. Davidson: It has not been done, if your Honor please; the order here is a general order.

The Court: Let me just see; this offense is alleged to have been committed in the Eastern District of Oklahoma.

Mr. Davidson: Prior to the time that the act was passed.

The Court: So it must be tried in the Eastern District.

Mr Davidson: That is true.

The Court: The jury must be drawn from the Eastern District.

Mr. Davidson: Yes, sir.

The Court: This is the Eastern District.

Mr. Davidson: It is not the Eastern District that existed at the time this offense was committed.

The Court: But this is the Eastern District.

Mr. Davidson: In name it is, but not in territorial integrity.

The Court: The only thing you have to complain of anything at all is that the jurors do not come from all of the counties constituting the Eastern District——

Mr. Davidson: That the jury box from which it is drawn was illegally filled and is not a jury box for the old Eastern District of Oklahoma.

The Court: Well, anyhow, the jurors that are here are probably from the Eastern District of Oklahoma.

Mr. Davidson: As it now exists.

The Court: Yes, sir.

Mr. Davidson: Yes, sir.

The Court: Do you think you are entitled to anything more?

Mr. Davidson: Yes, if your Honor please, we are entitled, under the Sixth Amendment to the Constitution of the United States to be tried by a fair and impartial jury.

The Court: Yes.

Mr. Davidson: Of the district as it existed at the time the offense was committed.

The Court: Yes.

Mr. Davidson: Which had been previously ascertained by law.

The Court: Now, this is a jury from the district in which the offense is alleged to have been committed.

Mr. Davidson: It is a jury for a part of that district.

The Court: No, I dislike very much to quash a jury panel of that kind.

Mr. Davidson: I realize, if your Honor please, that you do.

The Court: I am not going to mix up things down here; you keep them enough mixed in this territory down here anyhow so I would prefer not to help mix any. I am satisfied this is not going to injure anyone; I am satisfied no rights are going to be denied them by ruling so long as the jury is found in the Eastern District and qualified as jurors; it cannot hurt anyone's substantial rights.

Mr. Davidson: Well, on this motion, if your Honor please, we would like to have,—it is a verified motion, and we would like to offer that in evidence on the motion.

The Court: All right. Has counsel for the Government examined it?

Mr. Dodds: No, this is the first I have heard of it, if your Honor please.

Mr. Davidson: It has been on file, if your Honor please.

The Court: You might look at it and if you are willing to agree they are all in there, the facts in the case,—if not, we may have to try it. You can examine that and I will hear from you after the noon hour. I think we will proceed to the empaneling of the jury. Call a jury.

The Clerk: W. J. Fitts, J. B. Largent, A. C. Byrd, J. A. Boucher, W. E. Younkers, R. P. Crockett, C. H. Edwards, E. C. Pyle.

I believe Mr. Pyle was excused by Judge Kennamer last evening.

J. E. Craddock, George W. Clements, Fred A. Chapman, E. W. Fowler, J. D. Reeves.

The Court: Just a moment. Are the defendants present?

Mr. Davidson: Yes, sir, they are present, if your Honor please.

The Court: Has there been any arraignment?

Mr. Dodds: Both defendants have been arraigned, if your Honor please.

The Court: The record so shows, Mr. Clerk?

The Clerk: Yes, sir.

The Court: Very well. Swear the jury.

(The jury is sworn by the clerk to answer questions concerning their qualifications.)

The Court: Examine for the Government.

Mr. Dodds: May it please the court and gentlemen of the jury: This action is brought by the United States, a criminal case, under Section 5209, of the statutes of the United States against the two defendants William Lloyd Lewis, in the brown suit, and Allie E. Lewis, sitting next to him. They are the defendants. The case has to do with their actions while president and vice-president, respectively, of the Liberty National Bank at Tulsa, Oklahoma, and they are charged with making false entries in the minute book of that bank, in numerous counts, and they are further charged with making false entries in three reports to the Comptroller of Currency of the United States while engaged as president and vice-president respectively of that bank.

Now, the first juror in the corner; what is your name, please?

A. LARGENT.

The Court: The juror may stand while being examined and when examined by the Government the juror will be examined by the defense and we will pass the jury as we go.

Q. Now again, I ask you.

A. J. B. Largent.

Q. Where do you live, Mr. Largent?

A. Sulpher, Oklahoma.

Q. Where is that from here?

A. It is north about thirty-five miles.

Q. Are you acquainted with either one of the defendants, Allie E. or William Lloyd Lewis?

A. I am not.

Q. What is your business?

A. Grocery and market, meat market.

Q. How long have you lived in that portion of Oklahoma?

A. About two years.

Q. Are you a citizen of the United States?

A. I am.

Q. And of this State? A. Yes, sir.

Q. Bought up there? A. I did.

Q. What was your business prior to two years ago?

A. I was collecting; just had a collecting agency of my own.

Q. Have you ever been engaged in the banking business?

A. I have not.

Q. And have you any business transactions with the Liberty National Bank of Tulsa during your collecting business?

A. I don't remember any.

Q. None that you remember? A. No.

Q. Do you know any reason, juror, why you could not sit here as a fair and impartial juror and try this cause according to the evidence as you hear it and his Honor's instructions to you? A. I do not.

Q. You haven't any opinion or bias or prejudice in the matter that you know of? A. No, sir.

Mr. Dodds: That's all.

The Court: Just a moment. Examine for the defense.

Examination by Mr. Davidson.

Q. Mr. Largent, are you a stockholder in a state or national bank? A. No, sir.

Q. Have you ever suffered a loss as a depositor or stockholder in a failed bank?

A. I have not.

Q. Have you or anyone that is nearly related to you ever been prosecuted for violating the banking laws?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. I have not.

Q. Will you give a man charged with that offense the same fair and impartial trial as if he were charged with some other offense? A. I would.

Q. You don't know either one of these defendants, do you? A. No, sir, I don't.

Q. You know nothing of the facts in this case?

A. Well, I remember of reading some of it sometime ago but I don't remember much of what I read.

Q. Was it a newspaper accounts?

A. It was.

Q. Of other trials of the Lewises?

A. I don't remember just what it was that I read. I remember of something of the Liberty National Bank, I think.

Q. Did these newspaper reports which you have read create in your mind any opinion? A. No.

Q. As to the guilt or innocence of these defendants on this charge? A. No.

Q. Have you any opinion now? A. I have not.

Q. As to the guilt or innocence of these defendants?

A. No, sir.

Q. If accepted as a juror in this case will you give them a fair and impartial trial on the law and the evidence?

A. Yes, sir, I will.

Q. Are you a man of family, Mr. Largent?

A. I am.

Q. Any children? A. One.

Q. One child. Are you now or have you ever been a member of the Board of Directors of a national banking association or any other corporation?

A. No, sir.

Q. You have never had any experience as a director of any corporation? A. No.

Q. Mr. Largent, does the fact that these defendants have been indicted and charged with this offense carry any weight in your mind as evidence of their guilt of the offense charged?

A. No.

Q. You will not let the fact that they have been indicted weigh against them in the trial of this case?

A. I will not.

Mr. Davidson: I believe that is all, if your Honor please.

The Court: Next juror.

A. C. BYRD.

Examination by Mr. Lee.

Q. What is your name? A. A. C. Byrd.

Q. Where do you live, Mr. Byrd? A. Madill.

Q. You are on the regular panel here? A. Yes, sir.

Q. And have heard the statements of this charge against A. E. and W. L. Lewis?

A. Yes, sir.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Do you know of any reason why you could not try this case fairly and impartially? A. No, sir.

Q. Has anyone attempted to talk to you about the case since you have been here? A. No, sir.

Q. And you know nothing of it? A. No, sir.

Q. You are not a banker, are you? A. No, sir.

Q. What business are you engaged in?

A. Real estate business.

Q. You have lived at Madill quite a while?

A. Yes, sir.

Q. How long? A. Thirteen years.

Q. Yes, and you say you have had no connection with any banking transaction? A. No, sir.

Q. Through hearsay or otherwise, then, you know nothing about the facts in this case?

A. No, nothing except what I have read in the papers.

Q. Well, that has not created any opinion in your mind, has it, as to the guilt or innocence of the defendants?

A. No, sir.

Q. None whatever? A. No, sir.

Q. And do you know of any reason at all why you could not try this case fairly and impartially if taken as a juror in this case? A. No, sir.

Q. And you would do that under your oath?

A. Yes, sir.

Q. Are you acquainted with counsel for the defendants, Mr. Davidson, or Judge Williams, or any of the counsel?

A. No, sir.

Q. Or with counsel for the Government; are you personally acquainted with counsel for the Government?

A. No, sir.

Mr. Lee: That is all, Mr. Byrd.

Examination by Mr. Davidson.

Q. Mr. Byrd, have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever suffered a loss as a depositor?

A. No, sir.

Q. In a failed bank. You think you have lived at Madill about thirteen years?

A. Yes, sir.

Q. What business are you engaged in?

A. Real estate business.

Q. Real estate. To what extent did you read the newspaper accounts of this affair, and when was it, recently, or about the time the Liberty National Bank was taken over by the Security National Bank?

A. Well, I don't remember just what time it was; I have read—there was a good deal in the papers about it.

Q. You have read a good deal in the papers about it?

A. Yes, sir.

Q. On one occasion or several occasions?

A. Several occasions.

Q. Did these newspaper reports purport to give the facts in the case?

A. Well, I don't know.

Q. From reading of these newspaper reports did you form any opinion as to the guilt or innocence of these defendants of this charge? A. No, sir.

Q. Have you any opinion as to their guilt or innocence now? A. No, sir.

Q. Does the fact that these men have been indicted by a grand jury have any weight in your mind that they are guilty of the offense charged? A. No, sir.

Q. Can you give them the same fair and impartial trial on this offense as if they were charged with some other offense? A. Yes, sir.

Q. The fact that they are charged with violating the national banking laws does not prejudice you against them?

A. No sir.

Q. Are you a man of family? A. Yes, sir.

Q. How many children? A. Eight.

Q. Do you know any of the witnesses in this case—any of the Government witnesses in this case? A. No, sir.

Q. You don't know who they are, do you? A. No, sir.

Q. Do you know of any reason why you could not give the defendants and the Government both a fair and impartial trial in this case on the law and the evidence? A. No, sir.

Q. And if accepted as a juror you will do that?

A. Yes, sir.

Mr. Davidson: I believe that is all.

The Court: Be seated. Next juror.

J. A. BOUCHER,

Examined by Mr. Lee.

Q. You may state your name? A. J. A. Boucher.

Q. Where do you live, Mr. Boucher?

A. Antlers, Oklahoma.

Q. You lived there a good many years?

A. I have lived there six years.

Q. Where did you come from to Antlers?

A. Well, I used to live over in Coal County. I lived there since 1908.

Q. You have been a resident, then, of the State of Oklahoma for a good many years? A. About thirty years.

Q. Thirty-six years? A. Thirty years.

Q. Do you know anything about this case?

A. No, just as I read it in the newspaper, just kind of newspaper reports. I never paid no attention to it then.

Q. You paid no attention to that? A. No, sir.

Q. What I mean is, have you any opinion whatever as to the guilt or innocence of the defendants? A. No, sir.

Q. Do you know of any reason why you could not try this case fairly and impartially—any reason, whatever?

A. No, sir.

Q. Has anyone talked to you about the case since you have been here as a juror—no one has attempted to talk to you about it, you know nothing of it at all? A. No, sir.

Q. You are not acquainted with either of the defendants?

A. No.

Q. Or with counsel for the defendants? A. No, sir.

Q. Or with counsel for the Government, so far as that is concerned? A. No, sir.

Q. What is your business?

A. Second-hand dealer; furniture business.

Q. Yes. You are at Antlers? A. Yes, sir.

Q. Not in the banking business at all? A. No, sir.

Q. Have no interest in either of the two banks at Antlers? A. No, sir.

The Court: Examine for the defense.

Mr. Lee: I think that's all.

Examination by Mr. Davidson.

Q. Mr. Boucher, have you ever talked to anyone about this case who purported to know the facts and gave you the facts in it? A. No, sir.

Q. Do you know any of the Government witnesses?

A. No, sir.

Q. Have you read numerous newspaper accounts about trials of this case?

A. Not very much. I would just pick up a newspaper and generally look over the headlines, you know, and see what had happened, and I just throw it down. That is just about the way I read the newspapers.

Q. You did not permit them to make any fixed impression on your mind? A. Oh, not a bit in the world.

Q. Do you have now—— A. No, sir.

Q. ——any fixed opinion? A. No, sir.

Q. As to the guilt or innocence of these defendants or either of them? A. Not a bit.

Q. Have you ever expressed any opinion as to their guilt or innocence? A. No, sir, never have.

Q. Have you ever been a stockholder in a bank?

A. No, sir.

Q. Have you ever been a director in a corporation?

A. No, sir.

Q. Are you a man of family? A. Yes, sir.

Q. Of what does your family consist?

A. A boy and a girl.

Q. A boy and a girl? A. And a wife.

Q. Have you any bias or prejudice against a person who is charged with violating the national banking laws?

A. No, I don't know as I have—not—violating the——

Q. Who is charged with violating the national banking laws? A. No, I don't know as I would have.

Q. Would you give the defendants charged with violating the national banking laws just as fair and impartial a trial as if we were charged with violating some other law?

A. Yes, sir.

Q. You would make no distinction because of the fact it is a national banking law? A. No.

Q. Do you know of any reason why you cannot give the defendants and the government both a fair and impartial trial of this case? A. I do not.

Q. And if you are accepted as a juror in this case will you give both sides a fair and impartial trial on the evidence adduced? A. Yes, sir, I would.

Q. You say you are in the second-hand furniture business? A. Yes, sir.

Q. How long have you been engaged in that business?

A. About six years.

Q. About six years.

Mr. Davidson: I guess that's all.

The Court: Next juror.

R. P. CROCKETT,

Examined by Mr. Lee.

Q. You may state your name? A. R. P. Crockett.
Q. Where do you live, Mr. Crockett? A. Coalgate.
Q. Have you lived there a good many years?
A. About twelve.
Q. Twelve years. How old are you? A. Thirty-four.
Q. Where did you go from when you went to Coalgate?
A. Stonewall, Oklahoma.
Q. Just a little north of Coalgate? A. Yes, sir.
Q. Then you have lived in Oklahoma for a good many years? A. Yes, sir.
Q. What is your business? A. Lumber business.
Q. In the lumber business? A. Yes, sir.
Q. Do you know anything about the facts in this case, Mr. Crockett?
A. I have heard what purported to be the facts, yes, sir.
Q. Well, now, was that in casual reading?
A. Well, both.
Q. Did anyone who purported to know the facts state them to you? A. Yes, sir.
Q. And when he gave them to you he purported to know the facts?
A. Well, he said he did; I don't know whether he did or not.
Q. He said he did. Have you, then, any opinion formed in your mind as to the guilt or innocence of either of these defendants? A. No, I don't know as I have.
Q. You have no opinion that would influence your action in finding a verdict? A. No, sir.
Q. When did the body talk to you about this case?
A. It was when the trial was going on at Hugo, I believe.
Q. It was the last of April? A. Yes, sir.
Q. And you lived at Coalgate then? A. Yes, sir.
Q. You had been down at Hugo? A. No.
Q. Did the man who talked to you live at Coalgate?
A. Yes, sir.
Q. He lived there. He never lived at Tulsa so far as you know? A. No, sir.
Q. Well, then, the man who talked to you, so far as you could gather, just arrived at his knowledge of the case from hearsay; is that true? A. I guess so, yes, sir.
Q. Now, the point is, Mr. Boucher, whether or not you at that time formed an opinion and whether or not you today have an opinion as to the guilt or innocence of the defendant such as might influence your action in finding a verdict.

A. No, I don't think I have any opinion.

Q. You have not? A. No, sir.

Q. You could give these defendants a fair and impartial trial, could you? A. Yes, sir.

Q. Just the same as if nobody had ever mentioned this case to you? A. Yes, sir.

Q. I believe you said you were not acquainted with either of the defendants? A. No, sir.

Q. Never saw them before? A. No, sir.

Q. Acquainted with counsel representing the defendants? A. No, sir.

Q. Judge Williams or Judge Davidson? A. No, sir.

Q. Not acquainted with them? A. No, sir.

Q. All you know is this casual conversation with some man at Coalgate while the case was on trial at Hugo? A. Yes, sir.

Q. That's all you know about it. Since you have been examined as a juror here in attendance for this term of court at Ardmore has anyone talked to you about the case?

A. No, sir.

Q. No one has attempted to talk to you about it?

A. No, sir.

Q. Or approached you in any way about this case?

A. No, sir.

Q. You are not connected with the banking business?

A. No, sir.

Q. Let's see; you stated your business was the lumber business? A. Yes, sir, lumber business; that's right.

Q. You are not a stockholder or concerned in any national bank? A. No, sir.

Q. Had no connection with the Liberty National Bank at Tulsa? A. No, sir.

Q. No business transaction with them? A. No, sir.

Q. Know no one in that bank, whatever? A. No, sir.

Q. And nothing which would call your attention particularly to this case? A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Crockett, you say this party that talked to you about this case and purported to know the facts talked to you about the time of the Hugo trial? A. Yes, sir.

Q. You were not a juror at that trial, were you, at that term of the court? A. No, sir.

Q. You had nothing to do with the—that case at that time in any form, shape, or fashion, did you? A. No, sir.

Q. Did you talk with some person who is a resident of Coalgate at that time? A. Yes, sir.

Q. Who claimed to know the facts in the case?

A. Yes, sir.

Q. Who told you what he conceived to be the facts in the case? A. Yes, sir.

Q. Did the conversation with that party leave any impression on your mind at that time as to the guilt or innocence of these defendants?

A. I don't know; I don't think it did.

Q. You don't think it did? A. No, sir.

Q. Is your mind subject now to any impression or any influence as to the guilt or innocence of these defendants on this charge by reason of that conversation? A. No, sir.

Q. You can sit as a juror in this case and try the case just the same as if that conversation had never taken place?

A. Yes, sir.

Q. Did you read any newspaper accounts of this transaction or any of the trials in this case? A. Yes, sir.

Q. Did the newspaper accounts purport to give the facts and testimony in the case adduced in court?

A. I don't know about the testimony; it was supposed to be the facts in the case.

Q. You read those articles, did you, from time to time?

A. Yes, sir.

Q. Did they create any impression on your mind as to the guilt or innocence of these defendants on the charge?

A. Well, I don't know as they did, no, sir.

Q. Is there any impression or influence resting on your minds at this time as to the guilt or innocence of these defendants or either of them because of, or as a result of your reading on the newspaper reports? A. No, sir.

Q. Do you feel that you can give these defendants just as fair and impartial a trial in this case as though you had never read these newspaper reports? A. Yes, sir.

Q. And as though you had never had this conversation with this party? A. Yes, sir.

Q. And you will not permit either of those things to influence you in your verdict in this case? A. No, sir.

Q. Have you ever been a stockholder in a national or state bank. A. No, sir.

Q. Have you ever been a director in a corporation?

A. Yes, sir.

Q. How much experience—kill that question. The corporations in which you have been a director were business corporations, were they? A. Yes, sir.

Q. Are you a member now—are you a director now of any corporation? A. Yes, sir.

Q. You are a man of family? A. Yes, sir.

Q. Of what does it consist? A. A wife and girl?

Q. A wife and girl? A. Yes, sir.

Q. Do you know Mr. Lee or Mr. Dodds, Government counsel in this case? A. No, sir.

Q. Do you know any of the Government witnesses in this case? A. No, not that I know of.

Q. Do you know whether or not the men that you talked to about this case was a witness in the case?

A. No, I think not.

Q. Do you know of any reason why you cannot give both sides a fair and impartial trial under the law and the evidence in this case? A. No, sir.

Q. And if accepted as a juror you will do that?

A. Yes, sir.

Q. How long have you been engaged in the lumber business? A. About fifteen years.

Q. Fifteen years? A. Yes, sir.

Q. Has anyone related to you ever been prosecuted for violating the national banking laws? A. No, sir.

Q. Has anyone that is closely related to you ever suffered any considerable loss as a depositor or stockholder in a failed bank?

A. Well, no considerable loss. I have suffered a loss myself.

Q. You have suffered a loss yourself? A. Yes, sir.

Q. How long ago?

A. About a year or a year and a half; something like that.

Q. About a year or a year and a half ago? A. Yes, sir.

Q. Was that a considerable loss?

A. Not very much, no, sir.

Q. The loss was as a depositor? A. Yes, sir.

Q. Would the fact that you have suffered a loss as a depositor in a failed bank influence you in any way in rendering your verdict in the trial of this case? A. No, sir.

Q. You could lay that aside and entirely free yourself of that influence? A. Yes, sir.

Q And render a fair and impartial verdict on the law and the evidence? A. Yes, sir.

Q. And you would do that? A. Yes, sir.

Q. Did any prosecution grow out of the failure of the bank in which you suffered a loss as a depositor?

A. I don't know of any, no, sir.

Q. I didn't understand you.

A. I don't know of any that grew out of it.

Q. You don't know of any. Have you ever been president or secretary of the board of directors of any corporation?

A. Yes, sir.

Q. Are you now? A. Yes, sir.

Mr. Davidson: That's all, I believe.

The Court: Next juror.

W. J. FITTS,

Examination by Mr. Lee.

Q. What is your name? A. W. J. Fitts.

Q. Where do you live, Mr. Fitts? A. Atoka.

Q. You live at Atoka? A. Yes, sir.

Q. Lived there a good while?

A. About twenty-three years.

Q. And what is your business?

A. Restaurant business.

Q. Do you know anything about this case?

A. I have read a good deal about it, yes, sir.

Q. Did you—do you know anything about the facts of the case at this time? A. Only what I have read.

Q. Would what you have seen in the papers concerning this case influence your action in finding a verdict?

A. No, sir.

Q. You have now no fixed opinion as to the guilt or the innocence of the defendants? A. No, sir.

Q. Do you know of any reason whatever why you could not give them a fair and impartial trial?

A. No, sir.

Q. Never saw them before? A. No, sir.

Q. Not acquainted with counsel on either side?

A. No, sir.

Q. Anyone talk to you since you have been impaneled as a juror or since you have been on this panel in this term of court? A. No, sir.

Q. Or has anyone attempted to talk to you about this case? A. No, sir.

Q. And as you say, you know nothing of it?

A. Only what I have read.

Q. Such as would influence your action in finding a verdict? A. No, sir.

Q. Would it take evidence to remove any opinion that you might have, if at all, concerning the facts of this case?

A. No, sir.

Q. You could go into the jury box and try it just the same as if you had never heard of it; is that true, Mr. Fitts?

A. Yes, sir.

Q. And would do that? A. Yes, sir.

Q. You would do it if accepted as a juror? A. Yes, sir.
Q. You are not concerned in the banking business?
A. No, sir.
Q. Just restaurant business?
A. Yes, sir, just restaurant is all.

The Court: Examine for the defense.

Examination by Mr. Davidson.

Q. Mr. Fitts, are you a man of family? A. Yes, sir.
Q. Of what does it consist? A. Just my wife, is all.
Q. You and your wife. Have you ever been a stockholder in a state or national bank? A. No, sir.
Q. Ever suffered any loss as a depositor in a bank?
A. No, sir.
Q. Failed bank. Does the fact that these defendants are charged by indictment with violating the national banking laws carry any weight to your mind as evidence that they are guilty of that offense charged? A. No, sir.
Q. You would not let that fact that they have been indicted influence you at all in your verdict in this case?
A. No, sir.
Q. Have you ever been a director of a corporation?
A. No, sir.
Q. Your business, you say, is running a restaurant?
A. Yes, sir.
Q. How long have you been engaged in that business?
A. About sixteen years.
Q. About sixteen years. Now, have you ever talked to anybody that purported to know the facts in this case?
A. No, sir.
Q. To what extent have you read the newspaper accounts of the trial of the other cases, other indictments? A. Yes, sir.
Q. To what extent, I said?
A. Well, I read them every day when they were at Hugo and when they was at Muskogee.
Q. You read the newspaper reports? A. Yes, sir.
Q. Of those trials? And those reports purported to give the facts in the case, did they not? A. They were supposed to.
Q. Supposed to; and you read the articles in their entirety, did you? A. Yes, sir.
Q. Did the reading of those newspaper reports create any impression on your mind as to the guilt or innocence of these defendants or either of them on this charge? A. No.
Q. Can you try this case just as fairly and impartially as though you had never read those newspaper reports?
A. Yes, sir.

Q. You would not permit them to influence you to the least extent in your verdict in this case?

A. Not in the least.

Q. And you feel that you are capable of laying that aside and preventing it from influencing you at all? A. Yes, sir.

Q. Do you know Mr. Lee or Mr. Dobbs? A. No, sir.

Q. Has anyone closely related to you ever been prosecuted for violating the banking laws? A. No, sir.

Q. Has anyone closely related to you ever suffered a loss as a depositor in a failed bank? A. Not that I know of.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws? A. No, sir.

Q. Can you give a person charged with violating the national banking laws the same fair and impartial trial as if charged with the violation of some other law? A. Yes, sir.

Q. And you would do that? A. Yes, sir.

Q. If accepted as a juror? A. Yes, sir.

Q. Do you know of any reason why you cannot give both the Government and the defendants a fair and impartial trial of this case on the law and the facts? A. No, sir, I don't.

Mr. Davidson: That's all.

H. E. YONKERS,

Examination by Mr. Lee.

Q. What is your name? A. H. E. Yonkers.

Q. Where do you live, Mr. Yonkers? A. Henryetta.

Q. How long have you lived at Henryetta?

A. September, 1923—10th of September, 1923.

Q. You are a qualified voter in Okmulgee County?

A. Yes, sir.

Q. Did you live in Oklahoma when you went to Henryetta? A. Yes, sir, I lived at Dewar since 1916.

Q. Right close to Henryetta?

A. About two and one-half miles.

Q. So you have lived in this country a good while?

A. Since 1911.

Q. How old are you? A. Thirty-five today.

Q. Your business? A. Railroad agent.

Q. At Henryetta? A. Yes, sir.

Q. For what company? A. K. O. & G.

Q. Do you know anything about the facts in this case?

A. Just what I have read in the newspapers.

Q. When was that?

A. Well, sir, that was during the trial at Muskogee and the trial at Hugo.

Q. Last summer, was it, sometime?

A. Some six or eight months ago.

Q. That is just the press matters that were carried concerning the trial? A. Yes, sir.

Q. Did that create in your mind any impression as to the guilt or innocence of these defendants?

A. No more than any other newspaper account would of anything.

Q. Yes. Do you have now any impression in your mind as to whether or not the defendants are innocent or guilty of this charge? A. No, sir.

Q. Do you know of any reason why you could not try the case fairly and impartially? A. No, sir, I don't.

Q. And you would do that if accepted as a juror?

A. I would.

Q. Anyone talk to you about the case recently, since you have been examined as a juror here? A. No, sir.

Q. Not acquainted with either of the defendants?

A. No, sir.

Q. Or with counsel for the defendants or counsel for the Government? A. No, sir.

Q. Yes.

Mr. Lee: That's all, Mr. Yonkers.

Examination by Mr. Davidson.

Q. Mr. Yonkers, you say you read the newspaper accounts of the trial of this case in Hugo, of the trial of the other case at Hugo, and also the trials at Muskogee? A. Yes, sir.

Q. Those newspaper reports purported to give the facts and the evidence in the case, did they not?

A. Well, I couldn't say; I did not form an opinion of that of my own.

Q. You formed no opinion on that? A. No, sir.

Q. It made no lasting or fixed impressing on your mind?

A. No, sir.

Q. You have no opinion now? A. No, sir.

Q. By reason of that or for any other reason as to the guilt or innocence of these defendants or either of them on this charge? A. No, sir.

Q. Can you try this case just as fairly and impartially so far as these defendants are concerned and the Government as though you had never read those newspaper reports on those other trials? A. I could.

Q. And you will do that? A. I will.

Q. And you feel capable of doing it? A. Yes, sir.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. Are you a man of family? A. Yes, sir.

Q. Of what does it consist? A. One child.

Q. One child. And I don't recall how long you said you had been at Henryetta?

A. Since, I think, it was the first day of September, 1923; either in August or September.

Q. Neither you nor anyone closely related to you suffered any loss in the bank failures in Okmulgee County?

A. I have.

Q. You have? A. Yes, sir.

Q. You have suffered a loss personally? A. Yes, sir.

Q. And did anyone closely related to you lose anything in those failures? A. Yes, sir.

Q. Was it a considerable loss, Mr. Yonkers?

A. It was to me; about $4,000.00.

Q. There were prosecutions grew out of the failure of those banks down there, were there not?

A. In the one, sir, that I lost the money in?

Q. In the one you lost money it?

A. No, sir.

Q. You understand, Mr. Yonkers, that we are seeking to ascertain if you have a fair and impartial attitude of mind in which to try this case, and I am asking you these questions now to know whether or not, in your judgment, the fact that you have suffered a considerable loss in a failed bank—would that influence you either consciously or unconsciously in your verdict in this case, which is a prosecution charging violation of the national banking laws? A. I am afraid it would, sir.

Q. You are afraid it would.

Mr. Davidson: We submit a challenge to the juror.

Mr. Dodds: Just one question: That was a state bank was it, Mr. Yonkers?

A. I think it was, sir. It was the Citizens Bank, closed on the 4th of December of this year.

Q. Last year? A. Yes, 1925.

Q. Just lately. Well, it may result that you won't sustain much loss, may it not; will the depositors get any dividends back, or do you know about that?

A. Does not look like they will, to me.

Q. Now, could you try this case just the same as if you had not sustained that loss?

A. No, sir. I will state to you, I could not.

The Court: Stand aside. Call another juror.

L. H. MILLAN,

Examination by Mr. Lee.

Q. Have you heard the statement of this case?

A. Yes, sir.

Q. It is a charge against A. E. and W. L. Lewis for violating the national banking laws? A. Yes, sir.

Q. You know nothing about the facts in the case?

A. No, sir.

Q. Where do you live, Mr. Millan? A. Wagoner.

Q. In Wagoner County? A. Yes, sir.

Q. What is your business? A. Restaurant business.

Q. You are not acquainted with either of the defendants?

A. No, sir.

Q. Nor with counsel for the defendants? A. No, sir.

Q. Or with counsel for the Government, so far as that is concerned? A. No, sir.

Q. Did you say you knew nothing about the facts in this case? A. Very little; only what I read in the papers.

Q. I will ask you if you ever formed from what you have read, or otherwise, hearsay or otherwise, such an opinion as would influence your action at this time in finding a verdict?

A. No, sir.

Q. You have not? A. No, sir.

Q. And you could try the case fairly and impartially?

A. Yes, sir.

Q. Just the same as if it was a case you had never heard of at all? A. Yes, sir.

Q. No one has talked to you since you have been examined as a juror here? A. No, sir.

Q. You have been sitting during the term of this court in several juries, have you? A. Yes, sir.

Q. Trying several cases? A. Yes, sir.

Q. One of the regular panel? A. Yes, sir.

Q. No one has talked to you about it? A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q Mr. Millan, Wagoner County is an adjoining county to Muskogee, is it not? A. Yes, sir, on the north.

Q. Did you read the newspaper accounts of the two trials of the other case that took place at Muskogee?

A. Well, I read part of them.

Q. Part of them? A. Yes, sir.

Q. Those newspaper reports that you read purported to give the facts in the case, did they not? A. Yes, sir.

Q Did you read any of the reports of the trial of the other case at Hugo?

A. I don't remember of anything I read there.

Q. You don't remember of that? A. No, sir.

Q. Did you form any opinion or express any opinion as to the guilt or innocence of these defendants based on the newspaper reports that you read of the other trials?

A. No, sir.

Q Have you ever expressed an opinion as to their guilt or innocence? A. No, sir.

Q. Have you any opinion now as to their guilt or innocence? A. No, I have not.

Q. Did you ever suffer a loss as a depositor or stockholder in a bank? A. No, sir.

Q. Have you ever been a director of a corporation?

A. No, sir.

Q. No one closely related to you ever suffered a loss as a depositor? A. Not that I know of.

Q. In a failed bank? A. No, sir.

Q. Are you a man of family? A. Yes, sir.

Q. What is your occupation? A. Restaurant man.

Q. Restaurant. How long have you been in that restaurant business? A. Oh, about eight months.

Q. What was your occupation before that?

A. Farming.

Q. Farmer in Wagoner County? A. Yes, sir.

Q. Of what does your family consist?

A. Wife and one child.

Q. Wife and one child. Mr. Millan, does the fact that these defendants have been indicted by a grand jury carry any weight to your mind as to their guilt of the offense charged? A. No, sir.

Q. You would not let that fact influence you in the least in your verdict in this case? A. No, sir.

Q. You would give them a fair and impartial trial on the law and the evidence in the case? A. Yes, sir.

Q. And on nothing else? Do you know of any reason why you cannot give both the Government and the defendants a fair and impartial trial of this case? A. No, sir.

Q. You honestly believe that you can lay aside any influence that those newspaper reports may have had on you?

A. Yes, sir.

Q. And decide this case upon the law and the facts that are produced here before you on this trial? A. Yes, sir.

Q. You will do that if accepted as a juror? A. Yes, sir.

Q Do you know any of the Government witnesses?

A. I do not.

Q. No one has talked to you about the facts in this case, have they? A. No, sir.

Q. And you don't know anything about the facts other than what you have read in the newspapers? A. No.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws? A. No, sir.

Q. You can and will give the defendants on that charge the same fair and impartial trial as if they were charged with some other offense? A. Yes, sir.

Mr. Davidson: That's all, if you honor please.

The Court: Next juror.

CHARLES EDWARDS,

Examination by Mr. Lee.

Q. Your name? A. Edwards; Charles Edwards.

Q. Where do you live, Mr. Edwards?

A. Live at McCurtain, Oklahoma.

Q. Yes, sir; up above McAlester? A. Yes, sir.

Q. You have been one of the regular panel here at this term? A. Yes, sir.

Q. Has anyone talked to you or attempted to talk to you about this case since you have been here?

A. Why, Mr. Yonkers and I have discussed it a little.

Q. Mr. Yonkers, another juror? A. Yes, sir.

Q. Well, you did not either of you know anything about the facts, did you?

A. No, sir. I have read all the newspaper reports I could get hold of, and I discussed the case with other people since the early part of the case.

Q. Well, you based what you said, or what you know about it, upon newspaper accounts?

A. Well, partially, and on account of statements of other folks.

Q. Persons that knew about the facts? A. Well——

Q. Who were witnesses in the case?

A. No, sir, they were not witnesses that I know of.

Q. Well, did they know the facts?

A. Well, I don't know whether they did or not. I am in the banking business myself.

Q. Yes.

A. And I have had—have naturally taken an interest in that case, more so than if I had been in some other line. As to the facts in the case, I can't say that I know anything about the facts.

Q. You are in one of the banks at McCurtain, or is there but one bank there? A. One bank there.

Q. Just one bank? A. McCurtain State Bank.

Q. Yes. And being a banker you just naturally took an interest in this case? A. Yes.

Q. Well, I will ask you this, then: Have you formed in your mind such an opinion as to the guilt or innocence of the defendants or either of them as might influence your action in finding a verdict? A. I think I have.

Q. You have formed an opinion? A. Yes, sir.

The Court: Stand down.

HANS BURNEY,

Examination by Mr. Lee.

Q. Just remain standing, Mr. Burney. Where do you live? A. Marietta.

Q. Oh, you live in Marietta? Have you heard counsel's statement concerning this case, the charge against A. E. and W. L. Lewis? A. Yes, sir.

Q. Do you know anything about the facts of the case?

A. No, sir.

Q. What is your business? A. Confectionery clerk.

Q. How long have you lived at Marietta?

A. About twenty-five years.

Q. Have you been in that business all the time?

A. Well——

Q. Well, that is your business now?

A. Farming most; about eight years in the confectionery business.

Q. How old are you? A. Twenty-nine.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Do you know any reason whatever why you could not try this case fairly and impartially if accepted as a juror?

A. No, sir.

Q. You are not acquainted with either of the defendants?

A. No, sir.

Q. Or counsel? A. No, sir.

Q. And you would give both the Government and the defendants a fair and impartial trial if accepted as a juror?

A. Yes, sir.

Q. No one talked to you about this case since you have been here? A. No, sir.

Q. Since you—you have been on the regular panel?

A. Yes, sir.

Mr. Lee: That's all, Mr. Burney.

Examination by Mr. Davidson.

Q. Mr. Burney, are you a man of family? A. Yes, sir.

Q. Of what does it consist? A. My wife.

Q. How long have you been married? A. About a year.

Q. You have been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. Did you ever sustain a loss as a depositor in a failed bank? A. No, sir.

Q. Did anyone closely related to you ever sustain a loss in a failed bank as a depositor? A. Not that I know of.

Q. You say no one has talked to you about this case?

A. No, sir.

Q. Have you read the newspaper reports of the trials of the other case heretofore at Hugo and Muskogee?

A. No, sir, I don't believe I have.

Q. You never read any newspaper account of them at all?

A. I just glanced at the headlines, you might say. As far as knowing the details, reading the paper, I did not.

Q. What you did read made no impression on your mind as to the guilt or innocence of these defendants? A. No, sir.

Q. You have no opinion now? A. No, sir.

Q. As to their guilt or innocence? Does the fact that these defendants have been indicted by a grand jury carry any weight to your mind that they are guilty of the offense?

A. No, sir.

Q. Can you try this case and decide it free of any influence arising from the fact that they have been indicted?

A. I can.

Q. Have you any bias or prejudice against a person charged with violating a national banking law? A. No, sir.

Q. Can you give a person charged with that offense the same fair and impartial trial as if charged wtih some other offense? A. Yes, sir.

Q. Do you know Mr. Lee or Mr. Dodds, the Government prosecutors? A. No, sir.

Q. Do you know any of the Government witnesses?

A. No, sir.

Q. Do you know any reason that has not been disclosed that you cannot give the defendants and the Government both a fair and impartial trial of this case on the law and the evidence? A. No, sir, I do not.

Q. And if accepted as a juror in this case you will to the best of your ability? A. Yes, sir.

Q. Decide it upon the law and the facts? A. I will.

Mr. Davidson: Pass the juror.

The Court: Next juror.

J. E. CRADDOCK,

Examination by Mr. Lee.

Q. You may state your name? A. J. E. Craddock.
Q. Where do you live, Mr. Craddock? A. Stonewall.
Q. What business are you in? A. Farming.
Q. Been there quite a while? A. Twenty-four years.
Q. Do you know anything about this case?
A. No, sir, I don't.
Q. You know nothing about the facts in this case?
A. No, sir.
Q. Not acquainted with the defendants or either of them?
A. No, sir.
Q. Or counsel for the defendants? A. No, sir.
Q. Or the Government? A. No, sir.
Q. Do you know of any reason why you could not try this case fairly and impartially, Mr. Craddock?
A. None, whatever.
Q. You would do that if taken as a juror? A. Yes, sir.
Q. You have been here on the regular panel? A. Yes, sir.
Q. No one talked to you about it at all? A. No, sir.
Q. Or attempted to? A. No, sir.
Q. Did you state your business? A. Farming.
Q. Oh, you said that? A. Yes, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Craddock, are you a man of family? A. Yes, sir.
Q. Of what does it consist?
A. A wife and seven children.
Q. How long did you say that you had lived in Pontotoc County? A. In Pontotoc County for thirty years.
Q. Thirty years, and have been a farmer all that time?
A. Yes, sir.
Q. Are you a director in a corporation of any kind?
A. No, sir.
Q. Have you ever been a stockholder in a state or national bank? A. No, sir.
Q. Have you ever suffered a loss as a depositor in a state or national bank? A. No, sir.
Q. Has anyone closely related to you ever suffered a loss? A. Not that I know of.

Q. Have you any personal prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. You can give a man charged with that offense the same fair and impartial trial as if he were charged with some other offense? A. Yes, sir.

Q. You would do it if accepted as a juror in this case?

A. Yes, sir.

Q. You don't know either of the Government prosecutors, Mr. Lee or Mr. Dodds? A. No, sir.

Q. Do you know any of the Government witnesses in this case? A. No, sir.

Q. You have not talked to any of them? A. No, sir.

Mr. Davidson: Pass the juror.

FRED CHAPMAN,

Examination by Mr. Lee.

Q. What is your name? A. Fred Chapman.

Q. Where do you live? A. Ardmore.

Q. Live here a good while, Mr. Chapman?

A. I have lived here seven years.

Q. Do you know anything about this case?

A. I know a little about it, yes, sir.

Q. Have you formed or expressed any opinion as to the guilt or innocence of the defendant?

A. Well, I don't know as I have.

Q. Well, have you any opinion as to the guilt or innocence of the defendants?

A. I have no positive opinion as to the guilt or innocence of them, no, sir.

Q. Do you think you could go into the jury box and try this case fairly and impartially?

A. Well, I would try to, yes, sir.

Q. Is there any reason in your mind now or can you suggest any reason why you could not do that?

A. Well, I know both of the defense, and I know the attorney defending.

Q. You mean Judge Davidson?

A. I know Judge Davidson and I know the two defendants.

Q. You are personally acquainted with the two defendants? A. Yes, sir.

Q. Know them quite a while?

A. Yes, sir; not closely acquainted with them, but directly and indirectly I have known them ten or fifteen years.

Q. Yes, sir. Had business with the Liberty National Bank while they were there?

A. Not much business, but knew the business quite well.

Q. What business are you in?

A. I am farming and stock raising at the present time—oil business.

Q. Not in the banking business? A. No, sir, never was.

Q. Any of them talk to you about this case?

A. You mean the defendants?

Q. Well, yes, I will ask you that.

A. I have talked to people about the case, yes. Not to those people, though.

Q. Since you have been here on this panel—you have been a member of the regular panel? A. Yes, sir, I have.

Q. Has anyone talked to you about the case since you have been here? A. No, sir, they have not.

Q. You say they have not? A. No, sir.

Q. And generally speaking, you are pretty well acquainted with the case and the facts in the case?

A. From the beginning of the case, yes, sir.

Q. You have followed it pretty closely?

A. Well, I have made no study of it, but I used to live in Tulsa and I have talked to people that lived there about the case.

Q. And they knew about the facts in the case?

A. Some of the facts. I don't know much about the case—I never made any study of it or anything, but you just naturally meet up with people that do know those things and you notice it in the paper and you get to talking about it—a few things like that.

Q. Well, that made some impression on your mind?

A. Well, yes, sir, it did.

Q. That impression might influence your action in this case? A. It might.

Mr. Lee: We think the juror——

The Court: Oh, I suppose so. It might be embarrassing to the juror to try the defendants, knowing them.

The Juror: I would rather not serve.

The Court: Well, I can see that. And aside from that, we want in the end to know that the jury is absolutely impartial, and for that reason you may stand down.

MIDDLETON COOLEY,

(Sworn by the Clerk)

Examination by Mr. Lee.

Q. Is your name Cooley? A. Yes, sir.

Q. You live at Eufaula? A. Yes, sir.

Q. In what business? A. Farming, at present.

Q. In the farming business. Do you know anything about the facts in this case? A. I do not.

Q. You have heard a statement as to the charge against A. E. and W. L. Lewis, have you? A. I have.

Q. You say you know nothing of the case? A. No, sir.

Q. Not acquainted with the defendants or either of them?

A. No, sir.

Q. Nor with counsel? A. No, sir.

Q. Do you know any reason why you could not try this case fairly and impartially? A. I don't know that I do.

Q. Would you do that, Mr. Cooley? A. Yes, sir.

Q. Anyone talk to you about the case since you have been here? A. No, sir.

Q. You know nothing of it?

A. I don't know only just——

Q. That there is such a case on the docket?

A. That there was such a case existing.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Cooley, are you a man of family? A. Yes, sir.

Q. Of what does it consist?

A. Wife and four children.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. How long have you been a farmer?

A. Oh, I have farmed ever since I was large enough to farm, forty years.

Q. All your life?

A. Of course, I have done other things some along with it.

Q. What other avocations have you followed?

A. Well, I have drilled water wells and I have been in the mercantile business a little and the meat and grocery business.

Q. Do you know any of the Government witnesses in this case? A. I don't know that I do.

Q. Do you know Mr. Lee or Mr. Dodds?

A. I don't know them—not that I know of, only just have heard of them.

Q. You know who Mr. Lee is, do you not?

A. I have heard of him, is all.

Q. You read the newspaper reports of the two Muskogee trials of the other case against these Lewises, did you?

A. Well, I can't say that I did; I might have just noticed the headlines, sketches of something—heard it mentioned.

Q. Haskell County adjoins Muskogee? A. Haskell?

Mr. Lee: He lives in McIntosh.

Q. Oh, McIntosh County joins Muskogee County, doesn't it? A. Yes, sir.

Q. Have—if you read these newspaper accounts of the trial at Muskogee they left no impression on your mind as to the facts in the case?

A. I did not read them particularly, just naturally sketched over it and heard it mentioned. Nothing of what was supposed to be the facts. I never learned.

Q. Do you have any opinion now, Mr. Cooley, as to the guilt of innocence of either of these defendants on this charge? A. Not with my own knowledge, I haven't.

Q. Well, now, do you have any opinion as to their guilt or innocence based upon anybody else's knowledge?

A. Only through a grand jury this might exist, would be all. I have served on grand juries in my time.

Q. Oh, you have served on a grand jury in your time?

A. Yes.

Q. Not on this grand jury that returned this indictment, however? A. Oh, no; no, sir.

Q. Does the fact that a man has been indicted by a grand jury carry any weight in your mind as to the guilt or innocence of the charge? A. Yes, sir.

Q. It does? A. Uh huh.

Q. That fact would influence you in returning your verdict in this case? A. It would.

The Court: Just one moment. Suppose that I should charge you that the fact that the defendants stand indicted of this offense, no evidence whatever of their guilt, but their guilt must be proven to you by the evidence here to your satisfaction beyond a reasonable doubt, then you would feel that way?

A. No, sir I would——

The Court: How——

A. It would not.

The Court: Well, proceed. I shall charge the jury that, of course.

Mr. Davidson: I understand, if your honor please.

The Court: I understand.

Mr. Davidson: You know a juror can't conscientiously throw aside those things even though your honor does instruct them that way.

The Court: I understand, but that is one thing that is not apt in the end—it is not like having knowledge of the case from folks that they have talked to. They get those ideas pretty well out of their heads.

Mr. Davidson: I think we are entitled to a jury here to start out with, without any opinion as to the defendants' guilt or innocence in this case.

The Court: Yes.

Mr. Davidson: Now, this juror has an opinion based upon the facts that he believes a man, because he is indicted by a grand jury, is guilty. Now, that is not a fair attitude of mind.

The Court: He will have that pretty well out of his mind.

Mr. Davidson: Your honor, it is not fair to make us take that chance of getting it out of his mind.

The Court: Well, proceed.

Mr. Davidson: We submit a challenge to the juror.

The Court: Do you know anything about the facts in this case?

A. No, sir.

The Court: And of course you are not the judge of the law of this case?

A. No, sir.

The Court: Is the only thing, the only idea that you have in your mind that the defendants might be guilty is because they were indicted by a grand jury?

A. Yes, sir.

The Court: Well, what is that idea, that they might be indicted—they might be guilty or might not, or what is it?

A. That an intelligent grand jury would not find a true bill if they did not have sufficient evidence.

The Court: Well, I don't know about that

Mr. Davidson: May I ask him a question, if your honor please?

The Court: Surely.

By Mr. Davidson:

Q. Mr. Cooley, in your present frame of mind it would require evidence on the part of the defendants that they are not guilty to remove the opinion that you now have of their guilt, wouldn't it? A. Yes, sir.

The Court: Well, you may stand down.

ED LEE,

(Sworn by Clerk)

Examination by Mr. Lee.

Q. Your name is Lee? A. Yes, sir.
Q. What is your first name? A. Ed Lee.
Q. Where do you live, Mr. Lee?
A. I live in Sequoyah County.
Q. Do you know anything about this case? A. No, sir.
Q. Are you acquainted with either of the defendants?
A. No, sir.
Q. Are you acquainted with counsel for the defendants?
A. No, sir.
Q. You heard a statement of counsel concerning a charge against A. E. and W. L. Lewis, did you? A. Yes, sir.
Q. Now, I will ask you if you know anything about the facts in this case?
A. No, sir, I don't know anything about the facts. I have read through the papers just sketches of the case, but not as to what the facts were.
Q. Have you any opinion whatever as to the guilt or innocence of the defendants? A. No, sir.
Q. You have not? A. No, sir.
Q. Is there anything to keep you from rendering a fair and impartial verdict in this case? A. Nothing.
Q. Anyone talked to you about this case since you have been here? A. No, sir.
Q. Nobody? A. Nobody.
Q. Or attempted to? A. No, sir.
Q. You have been here on the regular panel?
A. Yes, sir.
Q. Have you sat as a juror in some of the trials during this present term of court? A. Yes, sir.
Q. Do you know of any reason whatever why you could

not give these defendants and the Government a fair and impartial trial in this case? A. None, whatever.

Q. And you would do that? A. Yes, sir.

Q. I believe you said you were a farmer? A. Yes, sir.

Q. Not concerned in the banking business? A. No, sir.

The Court: Examine for the defense.

Examination by Mr. Davidson.

Q. How long have you been engaged in the farming business, Mr. Lee? A. All my life.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. Have you ever suffered a loss as a depositor in a failed bank? A. Yes, sir.

Q. How recently?

A. Something like three years ago, I believe.

Q. Was that a considerable loss for a man of your means, Mr. Lee?

A. Well, I felt it that way.

Q. You felt it that way. Anyone else that was closely related to you suffer any loss as a depositor? A. Yes, sir.

Q. Considerable loss for their financial position?

A. Well, yes, I might say that.

Q. Any prosecution grow out of that bank failure?

A. Yes, sir.

Q. Would the fact that you and your relatives suffered a loss as depositors of that bank influence you in any way in your verdict in this case? A. No, sir.

Q. You feel that you can conscientiously say that you know you would not be influenced in your verdict in this case by the fact that you have suffered a financial loss in that matter? A. No, sir.

Q. What does your family consist of?

A. Two sons.

Q. Two sons? A. Yes, sir.

Q. Do you know any of the witnesses in this case for the Government?

A. I reckon not; if I do I don't know it.

Q. Do you know Mr. Lee or Mr. Dodds?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. You can give a man charged with that offense the same fair and impartial trial as if charged with violating some other law? A. Yes, sir.

Q. And if accepted as a juror in this case you will to the best of your ability, as a conscientious juror, render your verdict upon the law and the evidence in this case?

A. Yes, sir.

Q. And that alone? A. Yes, sir.

Q. Now, do you think that the newspaper reports that you read about the trial of this other case against these defendants will not influence you in any way in your verdict in this case?

A. No, sir.

Q. Did those newspaper reports purport to give the evidence of the trial of the other case?

A. I did not read the evidence.

Q. You did not read the evidence?

A. I did not read the general case through at all—just sketches of it.

Q. And your mind is not laboring now under any influence resulting from those newspaper reports?

A. No, sir.

Mr. Davidson: Pass the juror.

The Court: Next juror.

GEORGE W. CLEMENTS,

Examination by Mr. Lee.

Q. Your name is——

A. Clements, George W. Clements.

Q. Where do you live, Mr. Clements?

A. Waureka, Jefferson County.

Q. Do you know anything about the facts in this case?

A. Not a thing.

Q. Not acquainted with the defendants?

A. No, sir.

Q. Or counsel for the defense? A. No, sir.

Q. Do you know of any reason why you could not try this case fairly and impartially?

A. I do not.

Q. Now, from hearsay or otherwise is there established in your mind any conclusion whatever as to the guilt or innocence of the defendants or either of them?

A. No, none whatever.

Q. None in the world. You are on the regular panel here?

A. Yes, sir.

Q. Nobody talked to you about the case?

A. No, sir.

Q. Or attempted to? A. No, sir

Q. Nobody. You say you could give the Government and the defendants both a fair and impartial trial?

A. I could.

Q. And would do that if taken as a juror?

A. Yes, sir.

Q. You have sat as a juror before here at this term, have you? A. I have.

Q. In cases tried. Let's see, you told me you lived at Waureka? A. Waureka.

Q. And your business?

A. I am a railroad clerk, and incidentally engaged on the side in farming.

Q. You are a clerk there in the office and do farming besides? A. Yes, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. How long have you been a clerk in the railroad office there Mr. Clements?

A. This last occasion only a short time, since in November. I worked for the railroad three years prior to 1920. Since that time I have been engaged in farming near Waureka and still hold some farm interests.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Did you ever sustain a loss as a depositor in a state or national bank that failed? A. No, sir.

Q. Anyone closely related to you ever sustain a loss in a failed bank?

A. No, sir, not that I know of.

Q. Are you a man of family? A. Yes, sir.

Q. Of what does it consist?

A. Wife and two sons.

Q. Do you know any of the Government witnesses in this case? A. No, sir.

Q. Did you ever read any of the newspaper reports of other trials of the other case against these defendants?

A. If I have I don't remember it.

Q. You don't recall it?

A. No, sir.

Q. Did you ever talk with anybody who purported to know and to relate to you the facts in this case?

A. No, sir.

Q. Have you any opinion now as to the guilt or innocence of these defendants on this charge? A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws? A. None.

Q. Can you and will you give them a fair and impartial trial on that charge as though they were charged with violating some other law?

A. To the best of my ability.

Q. Well, you think you can do that, do you?

A. Yes, sir.

Q. Do you know of any reason in your mind why you cannot give these defendants and the Government a fair and impartial trial on the law and the evidence in this case?

A. I do not.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. Did you ever have any one that is related to you prosecuted for violating the national banking laws? A. No.

Mr. Davidson: Pass the juror.

The Court: Next juror.

G. W. FOWLER,

Examination by Mr. Lee.

Q. State your name. A. G. W. Fowler.

Q. Where do you live?

A. Near the town of Washington, in McClain County, Oklahoma.

Q. In McClain County?

A. Yes, sir.

Q. Lived there a good many years?

A. Seventeen years.

Q. Do you know anything about the facts in this case, Mr. Fowler? A. No, sir.

Q. Acquainted with either one of the defendants?

A. No, sir.

Q. Or counsel for the defendants or for the Government?

A. Not that I know of.

Q. Not acquainted with any of them? A. No, sir.

Q. You have been on the regular panel here?

A. Yes, sir.

Q. Tried and sat as a juror in some of the cases tried?

A. Yes, sir.

Q. Do you know anything whatever about the facts in this case? A. No, sir.

Q. Anyone talk to you since you have been here?

A. No, sir, nothing more than I think maybe I heard some of the jurors say that there was a Lewis case to come up yet.

Q. There was such a case on the docket?

A. Yes, sir.

Q. At any time from hearsay or otherwise have you formed such an opinion as to the guilt or innocence of the defendant as might influence your action in finding a verdict?

A. No, sir.

Q. You have no such opinion now? A. No, sir.

Q. No reason why you could not try the case fairly and impartially? A. No, sir.

Q. What is your business, Mr. Fowler?

A. I am a farmer.

Q. Yes. Been in McClain County, I believe you stated.

A. Seventeen years.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Folwer, are you a man of family? A. I am.

Q. Of what does it consist?

A. Well, I have a wife, son, and daughter, and a granddaughter.

Q. Have you been a farmer all your life?

A. Well, practically so, yes, sir. I worked in the store, I think, one year, and in the early days of Oklahoma I railroaded, I put in about four years railroading. Outside of that I have been a farmer all of my life.

Q. How long have you lived in McClain County?

A. Seventeen years.

Q. Seventeen years? A. Yes, sir.

Q. Do you know any of the witnesses for the Government in this case?

A. If I do I don't know it at present.

Q. Anybody ever talk to you who purported to know the facts in the case? A. No, sir.

Q. Do you know Mr. Lee or Mr. Dodds, the Government prosecutors?

A. No, sir, I never saw them before that I know of until this morning.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director in any corporation of any kind? A. No, sir.

Q. Do you know anything about the facts in this case from any source? A. No, sir.

Q. Did you ever read any newspaper reports of the other trials of the other cases?

A. Yes, sir, I read something about it a long time ago, it seems to me in the Oklahoman—we take the Oklahoman, or have taken the Oklahoman for a number of years. It seems to me since it is mentioned that I have read something about it.

Q. Were those newspaper reports that you read proceedings of the trial of the other case?

A. I don't remember now anything about that.

Q. Left no impression on your mind? A. No, sir.

Q. As to the guilt or innocence of the defendants on the charge? A. No, sir.

Q. Have you any opinion now as to the guilt or innocence of this charge? A. No, sir.

Q. Does the fact that a men has been charged by indictment carry any weight to your mind that he is guilty of the offense charged?

A. Well, no, I don't know—sure, it does too—sure it carries some little weight, that is, that there is something or the grand jury—naturally have some evidence to return an indictment.

Q. Is that opinion in your mind resulting from the fact that these defendants have been indicted, would that require evidence to remove it on the trial of this case?

A. No, sir, I don't know that it would.

Q. That opinion as to the guilt of these defendants on this charge because of the fact they have been indicted by a grand jury exists in your mind now, does it? A. Sir?

Q. That opinion resulting from the fact that these defendants have been indicted rests upon your mind at this time, does it? A. Well, yes—yes.

Q. And it would take something to remove that, wouldn't it? A. Well, yes I suppose it would.

Q. You think that the grand jury would not indict a man unless he is guilty, is that it?

A. Oh, no, but they generally have some evidence for the indictment.

Mr. Davidson: If your honor please, we submit a challenge to this juror.

The Court: Let me ask you a question. You answer my question just as I ask it.

A. Yes, sir.

By the Court:

Q. Have you now in your mind from any source whatever any information as to the guilt or innocence of these defendants on trial? A. No, sir; no, sir.

Q. Can you enter upon this trial knowing all that you do know from any source on earth with a mind that is perfectly impartial and without any thought as to whether the defendants are guilty or innocent at all? A. Yes, sir.

Q. You understand, do you? A. I do.

Q. That a grand jury acts as an investigating body?

A. Yes, sir.

Q. A grand jury acts generally only on one side of the matter and that that is the manner in the Federal Court of our country that charges are made against one, but the mere making of charges against citizens do not prove the fact at all. Do you understand that? A. Yes, sir.

Q. And that the grand jury acts on the matter because the defendants could not be tried in a matter of this kind at all until a grand jury had acted and presented some charge against them. Now, you state that you have no opinion whatever as to the guilt or innocence of the defendants of the charges preferred against them by the grand jury, is that right? A. Yes, sir, that's right.

Q. And your mind is in such shape that it won't require any evidence at all to take out of your mind any opinion you have in it now?

A. No, sir, I would absolutely try them on their evidence that was shown in the court room, yes, sir.

Q. I say, it don't require any evidence from any source?

A. No, sir.

Q. To remove any opinion you have now as to the guilt or innocence of the defendants? A. No, sir.

The Court: I think I will overrule it. Just remain standing.

Mr. Davidson: Let me ask him one more question, if your honor please.

The Court: Yes.

By Mr. Davidson:

Q. Mr. Fowler, the fact remains, however, that you would enter upon the trial of this case with a conviction in your mind and an opinion in your mind that these defendants are guilty or they would not have been indicted by the grand jury?

A. No, not definitely so, no, sir.

Q. And you have no opinion then as to their guilt or innocence at all? A. Oh, no.

Q. But you do feel that a grand jury would not indict unless they were guilty?

A. Oh, no, not necessarily so, but I feel that the grand jury would have some evidence or they would not convict them.

Mr. Davidson: If your honor please, we desire an exception to your honor's overruling of the challenge to this juror.

The Court: Very well, be seated. Next juror.

J. D. RIVES,

Examination by Mr. Lee.

Q. State your name. A. J. D. Rives.
Q. Where do you live, Mr. Rives?
A. Holdenville.
Q. How long have you lived in Holdenville?
A. About fourteen years.
Q. What is your business?
A. I am in the real estate and brokerage business at the present time.
Q. Not in the banking business at all?
A. No, sir.
Q. Not connected with any bank? A. Yes, sir.
Q. Have you any opinion in this case as to the guilt or innocence of the defendants or either of them?
A. I rather suspect I have.
Q. Well, you suspect you have; was anything you had heard about the case, was that just derived from hearsay?
A. No, sir, I read it pretty closely in the former trials—I followed it pretty closely.

The Court: Now, just a moment.

By The Court:

Q. You state to the court that you have at this time an opinion in your mind concerning the guilt or innocence of the defendants or either of them?
A. I say that I formed an opinion from reading those matters that were published.
Q. Well, if you formed that opinion you have that opinion still? A. I still have it.

The Court: You may stand down. You may call another juror. Call another juror. I understand that that is the extent of the regular panel. It is very probable that we will have to make an order here to bring in more jurors out of which to get a jury.

Mr. Davidson: If your honor please, the defendants, of course, in keeping with their contention in this case from the very beginning——

The Court: I see.

Mr. Davidson: Want to insist that the names be drawn from a jury box prepared and filled with names from the entire body of the original Eastern District of Oklahoma.

The Court: Well, the jury box, of course, is not here,

as I understand. As I understand it is at Muskogee. Is that right?

The Clerk: That is correct, sir.

The Court: So all I can do is to make a general order to draw this jury from the Eastern District of Oklahoma. I will make it, as constituted at the time that this offense is alleged to have been committed, or from the district as it now stands, as you may wish.

Mr. Davidson: Well, if your honor please, we want the jury drawn from a jury box prepared and filled for the old Eastern District with names from the entire territorial limits from that district as it existed at the time the offense was committed.

The Court: I am afraid we can't wait here to have that.

Mr. Davidson: I realize that, but that could have been done, of your honor please, without any delay in this court if they had seen fit to give us our constitution rights in the trial of this case.

The Court: Well, I will make an order—How many jurors should you have, Mr. Clerk?

The Clerk: Well, I hardly know. They are entitled to fifteen challenges in this case.

The Court: When I got through, if there had been enough jurors in the box, I intended to make to counsel this suggestion: that the regular panel was about exhausted—I suppose we generally do prefer to try to a regular panel of jurors, and a jury—you have a jury here of exceptional intelligence—of course, I don't want anyone to try their matter to any juror that they would feel would be in any way biased or prejudiced against them, but sometimes I find counsel too frequently to my mind challenge jurors just because they have challenges, or something that I never can tell what. Generally they don't get any better, but I would think that if we had a jury of twenty—you will prepare an order, Mr. Clerk, on the marshal's office to summon twenty men from the body of the district. Now it is very probable they can report before tomorrow morning, can't they?

The Clerk: I would not think so. They will probably have to do quite a bit of phoning to get these men.

The Court: If that proves true there will not be much use of keeping a jury or remaining here this afternoon, will there?

The Clerk: I don't think so.

The Court: Very well; you have the order prepared. Now, if you desire it I will make this order to draw this jury from the district as it is now constituted, or the district as it was constituted at the time that this offense is alleged to have been committed.

Mr. Davidson: We want, if your honor please, the order made to draw the jury from the body of the Eastern District as it existed at the time the offense was committed.

The Court: Very well.

Mr. Davidson: That is the old Eastern District, which included the ten counties up here and in one of which this offense was committed. And we want to except to the court's refusal to have prepared a jury box filled with names from the original jurisdiction of the Eastern District.

The Court: Very well. Look after the preparation, you gentlemen, of this order. Now, I think here I will just take an adjournment of the court until ten o'clock tomorrow morning. I don't think there will be much we can do here this afternoon, will there? I regret the delay——

Mr. Davidson: If your honor please, the only thing that can be done would be to finish up and get out of the way this motion to quash this entire panel.

The Court: Well, unless there is some matter in there that will have to be treated as a plea, instead of a motion, why, that will not take long. Is there anything you desire to draw an issue——

Mr. Lee: We will desire to demur to the motion here.

The Court: I will hear you on that then tomorrow morning. I apprehend this jury may as well go, then, until tomorrow morning at ten o'clock as they have not been empaneled as a jury yet; I see no necessity of their being kept together because I shall admonish them that

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Gentlemen of the jury, on account of there not being enough of the regular panel, and being compelled to draw from the body of the district to complete your body for this trial, that will take this afternoon at least. In excusing you now I am going to excuse you until tomorrow morning at ten o'clock, but with this admonition: You are to allow no one to talk to you about this case and you are to allow no one to talk in your hear-

ing about this case. You will not discuss the case together. If anything occurs in the public press regarding this case you will not read it. You will keep your minds entirely free from any opinion whatever regarding the merits of the case except what you get here in the court —the trial. That is the only way we can try a case properly. If anyone should commence to talk to you about this case it would be your duty to remind them that you are a juror or may be a juror engaged in the trial and must not do so. If anyone should persist after that it will be your duty to report it to the court, that the court may deal with them. It must always be in our courts that people accused with the commission of an offense under the law shall have their case tried by the evidence offered and received in the court and from nothing else, and the Government has that right, if being a litigant in our courts—one has just an equal right with the other. And I will say to you now in the trial of this case, while your duty is different, your responsibility for doing justice under the law in this case is just as great as the court is, and you must measure up to that responsibility. You may pass out now and return here tomorrow morning at ten o'clock. Others must remain seated.

(The jury retires.)

The Court: You may announce a recess of the court until two o'clock and then if Judge Kennamer desires to take up anything why the court will then be adjourned until ten o'clock tomorrow morning.

(Thereupon, pursuant to the order of court, court takes a recess until ten o'clock a.m., January 22, 1926.)

January 22, 1926, 10 o'clock A. M.

Court reconvened as per adjournment and the following proceedings were had, to-wit:

The Court: Let the jurors take their places in the box.

Mr. Davidson: If your honor please, we would like to have J. B. Champion entered here as associate counsel for the defense in the case.

The Court: Call another juror. Mr. Clerk.

The Clerk: We have not empaneled this jury.

The Court: Call the roll of the jurors.

(Thereupon, the clerk calls the names of sixteen men, who answer "present" and also calls the name of four men

who do not answer. The sixteen men who answered present were thereupon sworn and the following proceedings were had, to-wit:)

The Court: Gentlemen, let me say that on yesterday we exhausted the regular panel of jurors in this court and it became encumbent on the court to order additional jurors drawn from the body of the district and in response to that summons, in this very inclement weather for this section of the country, you are here. Now it is seldom in this court that jurors may be excused for any business reason. Of course, in cases of extreme sickness or death in the immediate family, dictates of conscience require that one excuse.

Now, with this statement is there any gentleman present who has any excuse to offer why you should not help out here with the remainder of this court, which will terminate, as I understand, when this case is finished? It has been a hardship upon you, your families, and your business, as I know, to call you here at this season of the year in this condition of the weather; simply we were required to do so. If no gentleman has any excuse to offer, why, you may be seated and we will proceed with the empaneling of the jury.

Now, you may call additional jurors.

W. T. CATES,

(Sworn by Clerk.)

Mr. Dodds: If your honor please, I will make a little opening statement again so that all the men who have been called——

The Court: Yes, you may do that. Mr. Marshal, we should have some bailiff here to take the wraps of the gentlemen when they come, relieve them of their wraps and help them on with them when the jurors are for any reason excused.

The Marshal: All right, sir.

The Court: Now, counsel for the Government will make a statement of the case so that all those jurors who have been brought in may know what the case is about.

Mr. Dodds: I will say to this gentleman and to the other jurors who have come in that this is an action that is a criminal action brought under the national banking laws of the United States in which the defendants Will-

iam Lloyd Lewis and Allie E. Lewis are charged with having made false entries in a book of the Liberty National Bank of Tulsa, Oklahoma, and are also charged with having made false entries in reports to the Comptroller of the Currency, that bank being a national bank.

By Mr. Dodds:

Q. Mr. Juror, are you acquainted with either——

The Court: The juror may stand while being examined.

Mr. Dodds: If you please, stand so we can see you.

The Court: Take the hat of the juror.

Q. Are you acquainted with William Lloyd Lewis who sits here at the end of the table or his brother over there, Allie E. Lewis, who sits in front of the gentleman who is standing up? A. No, sir.

Q. Do you know anything about the facts of this case of your own knowledge?

A. Nothing only what I read in the paper.

Q. You did read the papers at the time of prior trials of a similar case? A. Yes, sir.

Q. You don't know whether this is the same case or not?

A. Well I know that reading about the Lewis trials.

Q. Yes, you know it is the same defendants, whether it is the same case or not? A. Yes.

Q. Now, are you acquainted with any of the attorneys for the defendants here—Are you acquainted with Mr. Davidson? A. No, sir.

Q. Or this gentleman, Mr. Williams?

A. I don't know—I don't think so.

Q. Or Mr. Champion?

A. Yes, I am acquainted with Champion.

Q. You are acquainted with him. Does Mr. Champion do any of your legal business, Mr. Juror?

A. No, sir.

Q. Is your acquaintance with him close, intimate acquaintance or just casual?

A. Oh, just casual.

Q. Where do you live, please? A. Wilson.

Q. How far is that from Ardmore?

A. Twenty miles, about that.

Q. And do you do what legal business you do, if you are so unlucky as to have any, here at Ardmore?

A. Yes, sir.

Q. Would your acquaintance with Mr. Champion be such as would embarrass you in sitting as a juror in a case in which he was employed as an attorney? A. No.

Q. Do you know of any reason, juror, why you could not sit here and render a fair and impartial verdict in justice to these defendants and in justice to the Government just on the law as the court gives it to you and on the evidence as you hear it from the stand?

A. No, sir.

Q. What is your business, Mr. Cates?

A. I am a farmer.

Q. How do you spell your name, please?

A. Cates, C-a-t-e-s.

The Court: Remain standing; examine for the defense.

Examination by Mr. Davidson.

Q. Mr. Cates, are you a man of family?

A. Yes, sir.

Q. Of what does it consist?

A. Why, seven children.

Q. Seven chidren. Have you ever been a stockholder in a state or national bank?

A. No, sir.

Q. Or ever suffered a loss as a depositor in a bank?

A. Not much—a little.

Q. A small amount? A. Yes, sir.

Q. Did anyone nearly or closely related to you ever suffer a considerable loss in a state or national bank?

A. Well, yes, right smart.

Q. A considerable amount? A. Well, yes, sir.

Q. Do you think that the fact that you and your relatives have suffered losses in failed banks would prejudice you or influence you in any way in a trial of a defendant on a charge of violating the national banking laws?

A. I don't think so.

Q. You feel confident that would not influence you?

A. No, sir.

Q. How long ago was it that these losses occurred?

A. Oh, it has been three or four years.

Q. Was it a state or national bank?

A. State.

Q. Any prosecution grow out of the failure of the bank?

A. Yes, sir.

Q. Were you interested in any way in the prosecution?

A. No, sir.

Q. How long have you lived around or lived at Wilson, Mr. Cates? A. Nearly eight years in Wilson.

Q. You have been engaged in the occupation of farming during that time? A. Principally, yes, sir.

Q. Do you know any of the Government witnesses in this case? A. Which?

Q. Do you know any of the Government witnesses in this case? A. No, sir.

Q. Anyone talked to you about this case that undertook to give you the facts in it? A. No, sir.

Q. The newspaper reports that you read concerning the trials of the other case against these defendants did they purport to give the evidence on those trials or the facts in the case?

A. I don't know just—just—not—just what was in the paper; it didn't—just what passed—I don't think it gave the evidence or anything like that.

Q. Did what you read in the newspaapers create and leave in your mind any opinion as to the guilt or innocence of these defendants on the charge? A. No, sir.

Q. None, whatever? A. Well, I don't think so.

Q. Well, are you sure about that Mr. Cates?

A. Yes, because I just read it and never—not knowing the case or not knowing the people, but just read it. It left no—I did not get close enough to think enough about it to get any opinion or form any opinion about it.

Q. If accepted as a juror in this case can you enter the trial of it with your mind as open and free and impartial as though you had never read those newspaper reports?

A. Yes, sir, I think so.

Q. And if accepted as a juror would you give the defendants and the Government both a fair and impartial trial on the law and on the evidence as produced to you here in this court? A. Yes, sir.

Q. Have you ever been a director in a corporation of any kind? A. No, sir.

Q. Do you know any reason why you can't or should not sit as a juror in this case?

A. No, I don't know as I know of any reason.

Q. Of course, if there was a reason you would know it, Mr. Cates?

A. Of course, I would rather the other man be on the jury.

Q. I didn't understand you.

A. I say I would rather the other man be on the jury.

Q. Well, that is a pretty good kind of a juror to have.

Mr. Davidson: That is all.

The Court: Is the jury satisfactory to the Government?

Mr. Dodds: Pardon me one minute, if the court please. The Government will excuse Mr. Byrd.

The Court: Very well; call another juror.

JIM LONG,

(Sworn by the Clerk)

Examination by Mr. Lee.

Q. What is your name? A. Jim Long.
Q. You live where, Mr. Long? A. Sulphur.
Q. How long have you lived at Sulphur?
A. About fifteen years.
Q. And your business?
A. Real estate and loan business.
Q. Have you heard the statement of this case?
A. Yes, sir.
Q. Have you any opinion as to the guilt or innocence of the defendants such as might influence your action in returning a verdict? A. No, I don't know as I have.
Q. You know nothing of the facts?
A. Nothing only just what I read in the paper.
Q. I understand, but so far as the facts are concerned now you have no knowledge as to what the facts in this case are? A. No, sir.
Q. Have no opinion whatever that would influence your action? A. No, sir, I don't think so.
Q. Not acquainted with the defendants or either of them?
A. No, sir.
Q. Or counsel for the defendants? A. No, sir.
Q. Or the Government either, so far as that is concerned?
A. No, sir.
Q. You told me your business?
A. Real estate and loan business.
Q. Yes, sir; yes, sir. You were just summoned yesterday to appear here? A. Yes, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Long, did you ever sustain a loss as a depositor in a failed bank? A. No, sir.
Q. Anyone nearly related to you ever sustain a loss in a failed bank?
A. Nothing only just some good friends is all.
Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, I don't know as I have.
Q. Well, do you know that you are not?
A. Well, I could not say.

The Court: Now, this is to the question, Mr. Juror. State your question again; I don't think the juror understood it.

Q. Can you say that you know that you are not prejudiced against a person charged with violating the national banking laws?

The Court: Now, the question is: merely charged with violation.

A. No, I am not prejudiced.
Q. You are not prejudiced? A. No, sir.
Q. Are you a man of family? A. Yes, sir.
Q. Of what does it consist? A. Two children.
Q. Two children? A. A wife and two children.
Q. Do you know any of the Government witnesses in this case? A. No, sir.
Q. And anybody that purported to know the facts in this case talked to you and told you what they claimed the facts were? A. No, sir.
Q. Did you read any of the newspaper reports about the former trials of another case against these defendants? A. Yes, sir.
Q. Did you read the newspaper accounts of the trial at Hugo? A. A part of them, yes, sir.
Q. Did you read the newspaper accounts of two trials at Muskogee? A. Just part of one was all.
Q. Did those newspaper reports purport to give the evidence in the case, or the facts? A. Well, I couldn't say.
Q. Did those newspaper reports that you read create in your mind any opinion as to the guilt or innocence of these defendants of the offense charged? A. No, sir.
Q. You have no such opinion resting in your mind at this time? A. No, sir.
Q. If accepted as a juror in this case can you and will you decide the case upon the law and testimony as produced in this court, free and clear from any influence from the reading of those reports, newspaper reports on the trials of these defendants? A. Yes, sir.
Q. Do you know any reason why you cannot or ought not to sit as a juror in this case? A. No, sir.

Mr. Davidson: That's all, if you honor please.

The Court: Is the jury satisfactory to the defendants?

Mr. Davidson: Just a moment, your honor. If the

court please, may I ask the jurors collectively a question?

The Court: Certainly, certainly.

Mr. Davidson: How many of you gentlemen have been peace officers in the past; any of you? Constables, sheriffs, deputy sheriffs——

Ed Lee: Constable, deputy sheriff, and justice of the peace.

Mr. Davidson: What is your name, please?

Mr. Ed Lee: Ed Lee.

Mr. Davidson: Your name is Lee?

Mr. Ed Lee: Yes, sir.

Mr. Davidson: If your honor please, I have mislaid my list of those jurors and I am having some difficulty locating these jurors by name.

Your name is Mr. Fowler, is it not?

Mr. Fowler: Yes, sir.

Mr. Davidson: We will excuse Mr. Fowler.

The Court: Very well; stand down. Call another juror.

J. H. SNODGRASS,

(Sworn by the Clerk)

Examination by Mr. Lee.

Q. Where do you live, Mr. Snodgrass?
A. Pauls Valley, Oklahoma.
Q. How long have you lived there?
A. About nineteen years.
Q. And what is your business?
A. Hardware business.
Q. In the hardware business? A. Yes, sir.
Q. You heard the statement about the charge in this case? A. Yes, sir.
Q. The case against A. E. and W. L. Lewis? A. Yes, sir.
Q. Do you know anything about the facts in the case?
A. No, sir, just nothing only what I saw in the paper is all.
Q. Have you now any opinion as to the guilt or innocence of the defendants or either of them? A. No, sir.
Q. You could enter upon the discharge of your duties as a juror independent of anything you have read, free to

return such a verdict as the law and the evidence would authorize? A. Yes, sir.

Q. You were just recently summoned here? A. Yes, sir.

Q. From Pauls Valley. You are not acquainted with counsel for the defendant?

A. No, sir, not personally. I may have met them in time; I don't say I know them; I have just met them.

Q. You have met them? A. Yes, sir.

Q. They don't represent you in any litigation?

A. No, sir.

Q. You are not acquainted with either of the defendants in the case?

A. Well, I wouldn't say that—this gentleman sitting right over here (indicating), I think I met him, if you refer to him, at Tulsa one time. I am not sure, but I think I did.

Q. W. L. Lewis? A. Yes, sir.

Q. You know him, do you?

A. Well, I wouldn't say that—this gentleman sitting but I think I do, by him sitting down over there with his hat off.

Q. Have you any business relations with him?

A. No, sir.

Q. Just see him?

A. Yes, sir, just met him on a street with a friend.

Q. Would that fact influence you in your verdict?

A. No, sir.

Q. Wouldn't embarrass you at all—no business relation, I believe you said? A. No, sir, none, whatever.

Q. You just saw him. Was he in the bank there at Tulsa?

A. I think he was on the steps of the bank or close to the steps.

Q. Was that the Liberty National Bank?

A. Yes, sir.

Q. Were you doing business with the Liberty bank?

A. No, sir.

Q. Never have done business with that bank? A. No, sir.

Q. So there is no reason why you could not try this case fairly and impartially, Mr. Snodgrass?

A. I don't know of any reason.

The Court: Examine for the defense.

Examination by Mr. Davidson.

Q. Mr. Snodgrass, what did you say your business was?

A. Hardware business.

Q. Hardware. How long have you been engaged in that business? A. About nineteen years.

Q. Where is it you live? A. Pauls Valley.

Q. Pauls Valley? A. Yes, sir.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director of a corporation?

A. Yes, sir.

Q. Have you ever been an officer of a corporation?

A. Yes, sir.

Q. Are you now? A. Yes, sir.

Q. Did you ever sustain a loss as a depositor in a failed bank? A. Yes, sir.

Q. Any considerable amount? A. No, sir.

Q. How long ago? A. About two years ago.

Q. Any prosecutions grow out of the failure of the bank in which you sustained a loss?

A. Not up to date, no, sir.

Q. Would the fact that you had been a loser in a failed bank in any way bias or prejudice you against a person charged with violating the national banking laws?

A. No, sir, I don't think it would; I would say that it would not.

Q. You feel sure and confident that you could give the defendants, charged with violating the national banking laws, just as fair and impartial a trial as though they were charged with violating some other law? A. Yes, sir.

Q. You would do that if accepted as a juror? A. Yes, sir.

Q. Are you a man of family? A. Yes, sir.

Q. Of what does it consist? A. One girl and two boys.

Q. Your acquaintanceship with the defendant here, one of the defendants, was just a passing introduction in Tulsa?

A. That's all.

Q. You have never seen him since that time?

A. No, sir, not in this country.

Q. That was during the time that the Liberty National Bank was in operation?

A. Yes, sir, I think it was in operation at that time.

Q. Have you ever been a peace officer? A. No, sir.

Q. Did you ever hold any position under the Federal Government? A. No, sir.

Q. Do you know of any reason why you can't or ought not to sit as a juror in this case? A. No sir, I don't.

Q. If accepted as a juror will you to the best of your ability—— A. I will try.

Q. ——with a fair and impartial mind decide this case upon the law and the evidence as produced on this trial?

A. Yes, sir.

Mr. Davidson: That's all, if your honor please.

The Court: You may be seated. Is the jury now satisfactory to the defense?

Mr. Davidson: The defense will excuse Mr. Lee.

S. H. SCOTT,

(Sworn by the Clerk)

Examination by Mr. Lee.

Q. Where do you live, Mr. Scott?
A. Marietta, Love County.
Q. How long have you lived there?
A. Twenty years—a little over.
Q. Have you a business? A. Yes, sir.
Q. What is your business?
A. Well, I loan money on land and buy and sell land.
Q. Do you know anything about the facts in this case?
A. No, sir.
Q. Are you acquainted with either one of the defendants?
A. No, sir.
Q. Or counsel for the defendants?
A. No, I just know Mr. Champion when I see him, that's all.
Q. You live, I believe you said, at Marietta? A. Yes, sir.
Q. Just close to Ardmore?
A. Yes, about eighteen miles.
Q. And you have seen Mr. Champion? A. Yes, sir.
Q. Has he been your lawyer in any litigation of yours?
A. Oh, no.
Q. Nothing of that kind; you just know him when you see him? A. Yes, sir.
Q. Do you know any reason why you could not try this case fairly and impartially? A. No, sir.
Q. No opinion as to the facts that would influence you as a juror? A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Scott, how long have you lived at Marietta?
A. I have lived there a little over twenty years.
Q. You have been engaged in the same business practically all the time? A. No.
Q. What other occupation have you had, Mr. Scott?
A. Well, I have been in the mercantile business and I was in a busted bank while we got it pulled out of the hole.
Q. How long ago was that?

A. That has been, I think, about ten or twelve years—ten years, anyway.

Q. What position did you hold in the bank?

A. Well, while I was in there I was just in there; I was holding a vice-presidency, but I was just in there temporarily, I believe about eleven or thirteen or fourteen months. We got it straightened up and got our assessment up and all and then I dropped out.

Q. You then sustained a loss as a stockholder in the bank?

A. Yes, sir, at that time, and later on I lost my stock in the liability.

Q. Was that a considerable loss to you, Mr. Scott?

A. No, not much. I sold most of my stock at the time. I sold enough so I would not be a director.

Q. Did you ever lose any money as a depositor in a failed bank? A. No, they paid off.

Q. Mr. Scott, would the fact of your experience in that affair influence you in any way in rendering a verdict in this case? A. No, I don't think it would.

Q. Could you and would you, if accepted as a juror, decide this case upon the law and the evidence adduced on this trial, regardless and aside from any possible influence that transaction may have had upon your mind?

A. Oh, I would try to.

Q. You think you could do it? A. I think so.

Q. Are you a man of family? A. Yes, sir.

Q. Do you know Mr. Lee, Mr. Frank Lee, the district attorney? A. No, sir.

Q. Have you any bias or prejudice against a man charged with violating the national banking laws? A. No, sir.

Q. You could give one charged with that offense the same fair and impartial trial as if charged with some other offense, would you? A. Yes, sir.

Q. And you would do it if accepted as a juror in this case? A. Yes, sir.

Q. Mr. Scott, do you think that you can enter upon the trial of this case with an open, unprejudiced mind, and decide this case upon the law and the testimony as produced on this trial? A. Yes, sir.

Q. Aside from anything that you may have heard or read about this case, aside from any influence that this bank transaction that you had might have left upon your mind?

A. I think so.

Mr. Davidson: I believe that's all, if your honor please.

The Court: You may be seated. Is the jury now satisfactory to the Government?

Mr. Lee: We will excuse Mr. Snodgrass.

JOE NORMAN,

Examination by Mr. Lee.

Q. Where do you live, Mr. Norman? A. Sulphur.
Q. How long have you lived there?
A. About fourteen months.
Q. Where did you come from to Sulphur?
A. Connerville.
Q. How long have you lived in Oklahoma?
A. Since '97.
Q. You heard the statement of this case? A. Yes, sir.
Q. Do you know anything about the facts in the case?
A. No, sir.
Q. Any opinion such as might influence your action in finding a verdict? A. No, sir.
Q. Ever had any dealings with the Liberty National Bank at Tulsa? A. No, sir.
Q. Not acquainted with either one of the defendants?
A. No, sir.
Q. Nor counsel for the defendants? A. No, sir.
Q. Did you state what business you were in?
A. In the grocery business.
Q. Oh, yes; yes, sir.

Mr. Lee: That's all.

The Court: Examine for the defense.

Examination by Mr. Davidson.

Q. Mr. Norman, how long did you say you had lived at Sulphur? A. About fourteen months.
Q. Fourteen months; and where did you live prior to that time? A. At Connerville.
Q. Where is Connerville?
A. It is over in Johnson County, north of Tishomingo about eighteen miles.
Q. How long had you lived there?
A. About sixteen years.
Q. Are you a man of family? A. Yes, sir.
Q. Of what does it consist? A. A wife and one child.
Q. Have you ever been a stockholder in a bank?
A. No, sir.
Q. Did you ever sustain a loss as a depositor in a bank?
A. No, sir.

Q. Have you ever been a director in a corporation?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws? A. No, sir.

Q. Can you and would you if selected as a juror in this case give the defendants the same fair and impartial trial as though they were charged with some other offense?

A. Yes, sir.

Q. Have you ever been a peace officer? A. Sir?

Q. Have you ever been a peace officer?

A. Yes, sir, I have been a deputy sheriff.

Q. How long were you a deputy sheriff? A. Two years.

Q. In Johnson County? A. Yes, sir.

Q. Is that the only experience you have had as a peace officer? A. Yes, sir.

Q. Did you ever have any near relatives that sustained a considerable loss in a failed bank? A. No, sir.

Q. Have you ever been an employee of the Federal Government? A. Yes, sir.

Q. In what capacity? A. postmaster.

Q. Where? A. Connerville.

Q. How long were you postmaster there?

A. About twelve years, or ten—maybe eight years.

Q. When did that service begin, what year, if you remember? A. I don't recollect.

Q. Do you know Mr. Lee, the district attorney? A. No.

Q. Did you read any of the newspaper accounts of the trials of these defendants at Hugo and Muskogee? A. No, sir.

Q. Anybody ever talk to you about this case that undertook to give you the facts? A. No, sir.

Q. In it. You have heard of the case, the existence of such a case, have you not?

A. Just heard of it and that was all.

Q. That was all. Do you have any opinion now as to the guilt or innocence of these defendants on this charge?

A. No, sir.

Q. Do you know any reason why you could not or ought not sit as a juror in this case? A. No, sir.

Q. Have you ever been a juror in the federal court before? A. No, sir.

Q. Have you ever sat on criminal trials in the state courts? A. No, sir, I don't think so.

Mr. Davidson: Pass the juror for cause.

The Court: Is the jury satisfactory to the defense?

Mr. Davidson: Mr. Norman may be excused.

ERNEST COCHRAN,

Examination by Mr. Lee.

Q. Mr. Cochran, where do you live? A. Marietta.

Q. How long have you lived there?

A. About twenty years, I guess.

Q. What is your business?

A. I am in the hardware business now.

Q. Hardware business at Marietta. Do you know anything about the facts in this case?

A. Nothing only just what I have seen in the papers.

Q. That was last summer sometime, was it?

A. I believe it was.

Q. Have you now any opinion as to the guilt or innocence of the defendants? A. No, sir, I have not.

Q. Do you know any reason why you could not try this case fairly and impartially? A. I do not.

Q. Had any dealings with the Liberty National Bank at Tulsa? A. No, sir.

Q. Not acquainted with any of the parties here, counsel or defendants?

A. Why, I am acquainted with Mr. Champion.

Q. Yes. And does he represent you in any litigation of yours? A. No, sir.

Q. Has he ever represented you as your attorney?

A. He never has, no, sir.

Q. You simply know him, is that true? A. Yes, sir.

Q. And would that fact influence you in any way in this case? A. It would not.

Q. You would be governed entirely by the law and the evidence in the case? A. Yes, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Cochran, how long have you lived at Marietta?

A. About twenty years.

Q. And have you been engaged in the hardware business all that time? A. Not all the time, no, sir.

Q. What other occupation have you had there?

A. Well, I worked in the sheriff's office there for about six years.

Q. Worked in the sheriff's office as a deputy?

A. Yes, sir.

Q. For six years? A. Yes, sir.

Q. Are you a man of family? A. Yes, sir.

Q. Of what does it consist? A. Wife and two children.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Ever been a director in a corporation? A. No, sir.

Q. Did you read the newspaper accounts of the trial of these defendants on the other case at Hugo?

A. Yes, sir, I think I read most of them.

Q. Those newspaper accounts purported to give the evidence in the case, did they not?

A. Well, I don't remember whether it did or not; I don't think so.

Q. Did you read the newspaper reports of the two trials at Muskogee in the other case?

A. Well, I don't know whether I read both trials or not: I just remember reading of the case, but I don't remember very much about it.

Q. Did the articles in the newspapers that you read create any opinion or conviction in your mind as to the guilt or innocence of these defendants? A. They did not.

Q. Have you any opinion now? A. I have not.

Q. As to their guilt or innocence? A. I have not.

Q. If accepted as a juror in this case can you and will you try the defendants on the law and the facts as produced on this trial regardless of any influence that your mind might be resting under by virtue of having read those newspaper reports of the other trial?

A. I will, yes, sir.

Q. Did you ever have any position under the Federal Government? A. No, sir.

Q. Do you know any reason why you cannot or ought not to sit as a juror in this case?

A. I don't know of any.

Q. Do you know of Mr. Frank Lee, the District Attorney?

A. I think possibly I have met him, yes, sir.

Q. That acquaintance is casual, is it?

A. Yes, sir.

Q. Did you ever sit on the trial of a case in the Federal Court in the prosecution of anyone violating the national banking laws? A. No, sir.

Q. Ever sit on the trial of a criminal case as a juror in the state court?

A. Yes, sir.

Mr. Davidson: Pass the juror.

The Court: Is the jury now satisfactory to the defense?

Mr. Lee: Just a moment.

The Court: To the defense.

Mr. Davidson: The defense will excuse Mr. Millan.

J. H. YOUNG,

Examination by Mr. Lee.

Q. You live at Sulphur, Mr. Young?

A. Yes, sir.

Q. How long have you lived there?

A. Twenty-one years last June.

Q. And what is your business?

A. I am in the oil business.

Q. Yes, sir. Do you know anything about the facts in this case? A. No, sir.

Q. Do you know any reason why you could not try the case fairly and impartially?

A. No, sir.

Q. You would do that if taken as a juror, would you, Mr. Young? A. Yes, sir.

Q. Not acquainted with either one of the defendants, W. L. or A. E. Lewis? A. No, sir.

Q. Or of counsel for the defendants?

A. I know Mr. Champion.

Q. Yes, sir, you just know him? A. That's all.

Q. Does he represent you in any litigation?

A. No, sir.

Q. You have known him a number of years, Mr. Young?

A. Yes, sir.

Q. Would that fact influence your action in this case?

A. None whatever.

Q. Never had any dealings with the Liberty National Bank at Tulsa? A. No.

Q. Not a banker yourself? A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Young, have you ever been director in a corporation of any kind? A. Yes, sir.

Q. Have you ever been an officer of a corporation?

A. Yes, sir.

Q. Are you now?

A. Yes, sir.

Q. Do you know Mr Frank Lee, the District Attorney?

A. Yes, sir; I would not have known him—I knew him years ago.

Q. Would your acquaintanceship with Mr. Lee affect you in any way in rendering your verdict in this case?

A. None whatever.

Q. Have you read any of the newspaper accounts of the trials of these defendants on other cases?

A. Well, I have.

Q. Were they the reports of the Hugo trial or the Muskogee trial?

A. The Muskogee trial, published in The Tulsa World is where I read most of it.

Q. I see. Those reports purported to give the evidence in the case, did they not, Mr. Young?

A. Yes, sir.

Q. You read the reports? A. Yes, sir.

Q. Did the reading of those reports create any opinion in your mind as to the guilt or innocence of these defendants?

A. I rather think it did.

Q. You think it did?

A. Yes, sir.

Q. Do you have that opinion now?

A. Yes, sir.

Q. Is that opinion such at it would require evidence to remove? A. I believe it would.

The Court: Well now, let me see; have you an opinion in your mind as to the guilt or innocence of the defendants in this case now on trial?

A. Only by what I have read the evidence that I saw in the paper.

The Court: Did that evidence have any relation to this trial?

A. Not this one, no, sir.

The Court: Proceed.

By Mr. Davidson:

Q. Did you ever sustain a loss as a depositor in a bank?

A. Yes, sir.

Q. Any considerable amount?

A. No, sir, not much.

Q. Any prosecutions grow out of the bank failure in which you lost? A. Yes, sir.

Q. Were you a witness or were you interested in the prosecution?

A. As a witness.

Q. Mr. Young, if the same testimony is produced on the trial of this case that was produced on the trial of the case at Muskogee and which you read in the newspapers, would the opinion that you formed from the reading of those newspaper

reports of the trial of the other case influence you in your verdict in this case?

A. None whatever; it would not influence it at all. I have my mind made up in regard to the evidence I saw.

Q. Well, if that was the same evidence on the trial in this case then you would have an opinion in this case?

A. Yes, sir, that is what I am telling you.

Mr. Davidson: We submit a challenge to the juror, if your honor please.

The Court: Very well; stand down. Call another juror.

FRITZ SIDDLE.

The Court: I must say, though, we would get along with a great deal more satisfaction and ease in our courts if the newspapers did not publish as much as they do in this country. Proceed.

Examination by Mr. Lee.

Q. I did not catch your name.

A. Siddle, Fritz Siddle.

Q. Oh, yes. Where do you live, Mr. Siddle?

A. McAlester.

Q. Yes, sir. And how long have you lived there?

A. Fifteen years.

Q. And your business? A. Stock business.

Q. Do you know any thing about the facts in this case?

A. No, sir.

Q. Not acquainted with either of the defendants?

A. No, sir.

Q. Or counsel for the defendants? A. No, sir.

Q. Do you know any reason why you could not try this case fairly and impartially?

A. No, sir.

Q. You would do that if taken as a juror, would you, Mr. Siddle?

A. Yes, sir.

Q. Anyone ever talk to you about the case?

A. No, sir.

Q. And you have no opinion about it?

A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Siddle, have you read any of the newspaper reports of accounts of the trials of these defendants at Hugo?

A. I might have read it, yes, sir.

Q. Did you read the newspaper accounts of the two trials at Muskogee?

A. I could not say that I have.

Q. You don't recall that?

A. No, sir.

Q. Did the reading of the reports that you did read create any opinion in your mind as to the guilt or innocence of these defendants or either of them?

A. No, sir, I couldn't say that; it never impressed my mind. I just heard the case this morning and just referred back that I had read the case; that's all I know.

Q. You have no opinion now in your mind as to their guilt or innocence of this charge? A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. You can give a man charged with that offense the same fair and impartial trial as if charged with some other offense, can you? A. Yes, sir.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Have you ever been a director in a corporation?

A. No, sir.

Q. You are a man of family, are you? A. Yes, sir.

Q. Of what does it consist?

A. Six boys and three girls.

Q. Have you ever been a peace officer? A. Yes, sir.

Q. How much experience have you had as a peace officer?

A. Two years deputy sheriff and jailer down there at McAlester.

Q. Deputy sheriff and jailer at McAlester?

A. Yes, sir.

Q. For two years? A. Yes, sir.

Q. Have you ever been in the employ of the Federal Government? A. No, sir.

Q. Do you know of any reason why you can't or ought not to sit as a juror in this case?

A. No, sir.

Q. If accepted as a juror will you give the defendants a fair and impartial trial with a free and open mind upon the law and the evidence as produced on this trial?

A. Yes, sir.

Mr. Davidson: Pass the juror.

The Court: Is the jury now satisfactory to the Government?

Mr. Lee: Mr. Cates—just a moment. We will excuse Mr. Cates.

CHARLES SADLER,

Examination by Mr. Lee.

Q. Where do you live, Mr. Sadler?
A. Marietta.
Q. How long have you lived there?
A. I have been there six years.
Q. What is your business?
A. Farming and teaming work five or six years.
Q. You have heard the statement of this case, have you, Mr. Sadler? A. Yes, sir.
Q. Do you know anything about the facts in this case?
A. No, sir.
Q. Do you know of any reason why you could not try the case fairly and impartially? A. No, sir.
Q. You would do that if taken as a juror, would you?
A. Yes, sir.
Q. Not acquainted with either one of the defendants A. E. or W. L. Lewis? A. No, sir.
Q. Or with counsel on either side?
A. No, sir.
Q. No business relations with the Liberty National Bank in Tulsa? A. No, sir.
Q. That is to say, there is no reason in your mind why you could not give the defendants and the Government a fair and impartial trial?
A. There is not.

Mr. Lee: That is all.

Examination by Mr. Davidson.

Q. Mr. Sadler, how long have you lived at Marietta?
A. I have been in town six years.
Q. Where did you live before that?
A. Eight miles out of town.
Q. What business were you engaged in when you were in the country; farming? A. Farming.
Q. You never owned any stock in a bank, have you?
A. No, sir.
Q. Ever been a director of a corporation?
A. No, sir.
Q. Any officer of a corporation?
A. No, sir.

Q. Ever read any of the newspaper reports of the trials of these defendants on other charges?

A. Oh, I guess I read some of them but I don't remember now.

Q. Did you ever read any newspaper accounts that purported to deal with the evidence on the other trials?

A. Not that I remember.

Q. Have you any opinion resting on your mind at this time as to the guilt or innocence of these defendants or either of them on this charge? A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. If accepted as a juror in this case can you and will you give the defendants a fair and impartial trial and open and free mind? A. Yes, sir.

Q. Upon the law and the facts as produced on the trial of this case? A. Yes, sir.

Q. Have you ever been a peace officer? A. No, sir.

Q. Have you ever been in the employ of the Government?

A. No, sir.

Q. Do you know any reason why you cannot or ought not to sit as a juror in this case? A. No, sir.

Q. What state are you originally from? A. Texas.

Q. How long have you been in Oklahoma?

A. Twenty-six years.

Mr. Davidson: Pass the juror.

The Court: Is the jury now satisfactory to the defense? You may be seated, Mr. Juror.

Mr. Davidson: The defense will excuse Mr. Craddock.

L. E. THOMPSON,

Examination by Mr. Lee.

Q. You live at Marietta, Mr. Thompson?

A. Yes, sir.

Q. What business are you in?

A. Automobile business.

Q. How long have you lived there?

A. About three years.

Q. Where did you come from? A. Texas.

Q. What part? A. Near Sherman.

Q. Near Sherman? A. Yes, sir.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Are you acquainted with A. E. or W. L. Lewis?

A. No, sir.

Q. Or with counsel for the defendants?

A. No, sir.

Q. None of them. Do you know any reason why you could not try this case fairly and impartially?

A. No, sir.

Q. No one has ever talked to you about the case, have they, Mr. Thompson?

A. No, sir, not that I know of.

Q. Never heard of it until you came here this morning?

A. Well, I noticed a newspaper account of it sometime ago.

Q. Did that create in your mind any opinion as to the guilt or innocence of the defendants?

A. No, sir, I did not read all of it; I just merely glanced at it and passed it up.

Q. You could try the case just the same as if you had never heard of it? A. Yes, sir.

Q. And would do that if taken as a juror?

A. Yes, sir.

Q. How old are you? A. Thirty-seven.

Q. Man of family, I suppose?

A. Yes, sir.

Q. Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Thompson, have you ever been a stockholder in a state or national bank?

A. No, sir.

Q. Ever been a director of a corporation?

A. No, sir.

Q. Ever been an officer of a corporation?

A. No, sir.

Q. You say you have read some newspaper accounts of the trial of these defendants before?

A. Well, yes, I noticed a—just noticed a newspaper account of it; I did not read all of it.

Q. Was that the trial at Hugo or the trial at Muskogee?

A. I don't remember which one it was.

Q. Did what you read create any impression in your mind as to their guilt or innocence? A. No, sir.

Q. Have you any opinion now resting upon your mind?

A. No, sir.

Q. As to their guilt or innocence of this charge?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with the violation of the national banking laws?

A. No, sir.

Q. You could and would give the defendants the same fair and impartial trial if accepted as a juror upon this charge as though they were charged with some other offense?

A. Yes, sir.

Q. Have you ever been a peace officer? A. No, sir.

Q. Have you ever been in the employ of the Federal Government? A. No, sir.

Q. Do you know any reason why you cannot or ought not to sit as a juror in this case?

A. No, sir, I don't.

Mr. Davidson: Pass the juror for cause.

The Court: What does the defense say now?

Mr. Davidson: May I ask how many challenges we have exercised?

The Clerk: Five.

Mr. Dodds: How many the Government, Mr. Clerk?

The Clerk: Three.

The Court: You see you don't have to exercise all the law allows.

Mr. Davidson: The defense will excuse Mr. Sadler.

A. L. MEANS,

(Sworn by Clerk.)

Examination by Mr. Lee.

Q. You live at Wilton, Mr. Means? A. Yes, sir.

Q. How long have you lived there?

A. About eight years.

Q. What is your business? A. Grocery business.

Q. Where did you come from to Wilton? A. Okmulgee.

Q. Lived in the state a long time? A. All my life.

Q. All your life. Are you acquainted with either of the defendants, W. L. or A. E. Lewis?

A. No, sir.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Is there any opinion in your mind such as might influence your action in finding a verdict?

A. No.

Q. You know of no reason why you could not give the defendants and the Government both a fair and impartial trial? A. No, sir.

Q. You would do that, Mr. Means, if taken as a juror?

A. Yes, sir.

Q. You are not a banker? A. No, sir.

Q. Never had dealings with the Liberty National Bank at Tulsa? A. No, sir.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Means, are you a man of family?

A. Yes, sir.

Q. Of what does it consist? A. One child.

Q. How old are you, Mr. Means?

A. Thirty years old.

Q. Thirty. How long have you lived at Marietta?

A. I don't live at Marietta.

Q. Where is your home?

A. Wilson.

Q. Oh, Wilson. How long have you lived in Carter County? A. Eight years.

Q. Have you ever been a stockholder in a bank?

A. No, sir.

Q. Have you ever been an officer or director of a corporation? A. No, sir.

Q. Anyone ever talk to you about this case that undertook to give you the facts in it?

A. No, sir.

Q. Did you ever read any of the newspaper accounts of the trials of these defendants at Hugo or Muskogee?

A. No, sir.

Q. Did you ever sustain a loss as a depositor in a failed bank? A. No, sir.

Q. Anyone closely related to you ever sustain a loss in a failed bank? A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. Do you know any reason why you cannot or ought not to sit as a juror in this case?

A. No, sir.

Q. If accepted as a juror will you try the case with an open, free, and frank mind upon the law and the testimony as produced on the trial of this case?

A. Yes, sir.

Q. Have you ever been a peace officer?

A. No, sir.

Q. Have you ever been in the employ of the Federal Government? A. No, sir.

Q. Do you know Mr. Frank Lee, the District Attorney?

A. No, sir.
Q. What state are you a native of? A. Oklahoma?
Q. Have you lived in Carter County all your life?
A. No, sir.
Q. What county were you born in? A. Carter County.
Q. In Carter County.

Mr. Lee: Here in Ardmore?

A. No, sir, Hewitt.

By Mr. Davidson:

Q. Are you any relation to W. W. Means?
A. Yes, sir.
Q. Your father? A. No, sir.

Mr. Davidson: Pass the juror for cause.

The Court: What does the Government say now?

Mr. Dodds: The Government is satisfied with the jury as it now stands, if your honor please.

The Court: Very well. What do you say for the defense?

Mr. Davidson: What is the last juror's name on the back row?

The Juror: Boucher.

Mr. Davidson: Boucher; the defense will excuse Mr. Boucher.

CARL SHOEMAKE,

(Sworn by Clerk.)

Examination by Mr. Lee.

Q. You live at Pauls Valley, Mr. Shoemake?
A. Yes, sir.
Q. How long have you lived there?
A. About thirty-one years.
Q. What is your business? A. Dry goods merchant.
Q. Do you know anything about the facts in this case?
A. No, sir.
Q. Not acquainted with either of the defendants?
A. No, sir.
Q. Or counsel for the defense?
A. No, sir.
Q. Do you know any reason why you could not try this case fairly and impartially? A. No, sir.
Q. Had no dealings with the Liberty National Bank?
A. No, sir.

Q. You are not a banker yourself? A. No, sir.

Q. Any opinion formed in your mind as to the guilt or innocence of the defendants that might influence your action in finding a verdict? A. No, sir.

Mr. Lee: No further questions.

Examination by Mr. Davidson.

Q. Mr. Shoemake, did you ever sustain a loss as a depositor in a failed bank? A. No, sir.

Q. Anyone closely related to you ever sustain a loss in a failed bank as a depositor? A. No, sir.

Q. Are you a man of family? A. No, sir.

Q. Have you ever been a peace officer? A. No, sir.

Q. Have you ever been an employee of the Federal Government? A. No, sir.

Q. Ever talk to anyone about this case who undertook to give you the facts in it? A. No, sir.

Q. Did you ever read any newspaper accounts of the trials of these defendants at Hugo or at Muskogee?

A. I don't remember of reading any of them.

Q. You don't recall? A. No, sir.

Q. As I understand it, then, you don't know anything at all about the facts in this case now? A. No, sir.

Q. You have no opinion as to the guilt or innocence of these defendants on this charge?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking law?

A. No, sir.

Q. If accepted as a juror in this case can you and will you give the defendants a fair and impartial trial?

A. Yes, sir.

Q. Upon the law and the facts as produced in this case with an open, free, and frank mind?

A. Yes, sir.

Q. Have you ever been a director of a corporation?

A. Yes, sir.

Q. Have you ever been an officer of a corporation?

A. Yes, sir.

Q. In what business do you say you are engaged in?

A. Dry goods business.

Q. Dry goods business? A. Yes, sir.

Q. How long have you been engaged in that business?

A. About thirty years.

Q. That has been at Pauls Valley? A. Yes, sir.

Q. Do you know Mr. Frank Lee, the District Attorney?

A. No, sir.

Q. Do you know any of the Government witnesses in this case? A. No, sir.

Q. Are you acquainted around Tulsa?

A. No, sir.

Mr. Davidson: Pass the juror for cause.

The Court: What does the defense say now?

Mr. Davidson: The defense will excuse Mr. Cochran.

W. C. ANDREWS,

(Sworn by Clerk.)

Examination by Mr. Lee.

Q. You live at Marietta, Mr. Andrews? A. Yes, sir.

Q. How long have you lived there?

A. Six years.

Q. What is your business?

A. Well, I am not in business now. Dry goods is my line, but I am not in business now.

Q. You have been in the dry goods business there?

A. No, in Texas.

Q. In what part of Texas? A. Denton County.

Q. Do you know anything about the facts in this case?

A. No, sir, nothing more than just as I suppose other men said, paper talk; that's all. I have noticed that, I have read it, but that's all I know about it, just paper news.

Q. Did that create any opinion?

A. I do not believe it did.

Q. Do you have any opinion now as to the guilt or innocence of the defendants?

A. No, sir. I don't think so.

Q. Do you know any reason why you could not try the case fairly and impartially?

A. No, sir.

Q. You would do that, Mr. Andrews, if taken as a juror?

A. Yes, sir.

Q. You are not acquainted with either one of the defendants? A. No, sir.

Q. Did you say how long you had lived at Marietta?

A. Six years.

Q. Six years?

A. Yes, sir.

Q. You were in the dry goods business at Marietta?

A. No, Slidell, Denton County; I was there twenty years. I am not in business now.

Mr. Lee: That is all.

Examination by Mr. Davidson.

Q. Mr. Andrews, have you ever been a stockholder in a state or national bank?

A. Well, I am a stockholder in one bank now.

Q. In one bank? A. Yes, sir.

Q. Did you ever sustain a loss as a stockholder?

A. No, sir.

Q. Did you ever sustain a loss as a depositor in a failed bank? A. No, sir.

Q. You have been a director and officer of a corporation in your days, have you not? A. Yes, sir.

Q. Do you know Mr. Lee, District Attorney here?

A. No, sir.

Q. What state are you from, Mr. Andrews?

A. Texas.

Q. Has anyone nearly related to you ever sustained a loss in a failed bank?

A. No, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. I don't think so.

Q. You can give a person charged with that offense the same fair and impartial trial as you could if charged with some other crime?

A. Yes, sir.

Q. You are a man of family, are you?

A. Yes, sir.

Q. What is your age, Mr Andrews?

A. I am sixty years old, just a little bit over.

Q. Sixty years old?

A. Yes, sir, sixty last July.

Q. Your business experience as a merchant was in Carter County? A. No, sir.

Q. In Love County?

A. No, sir, it was in Denton County, Texas.

Q. Oh, Denton County, Texas; I beg your pardon. You have not been in business, then since you lived in Marietta?

A. Well, really, I bought out a drug business and ran that a while in Marietta and sold that, but that is the last business I owned.

Q. Did you read the newspaper reports of the trials of these defendants at Hugo?

A. Well, I would not be sure, but I think I did.

Q. Well, did you read the newspaper accounts of the trials at Muskogee?

A. I think I did.

Q. Did the newspaper accounts that you read purport to give the evidence in the case?

A. I don't think so; I would not say for sure but I don't think so.

Q. Well, did they purport to give the facts in the case?

A. Well, I hardly think so.

Q. Well, Mr. Andrews, can you say certainly that these reports in the newspapers that you read did not create any impression in your mind, any opinion in your mind as to the guilt or innocence of these defendants?

A. No, I don't think it did.

Q. And you have no opinion in your mind at this time?

A. No, sir. I did not give it very serious thought but I remember reading it.

Q. If accepted as a juror in this case can you and will you with an open, free, frank, and impartial mind try this case upon the law and the facts as produced on the trial here in this court? A. I think so.

Q. And you can do that?

A. Yes, sir, I think so.

Q. Do you know of any reason why you cannot sit as a juror or ought not to sit as a juror in this case?

A. Nothing more than I would rather the other man had my place; that is the only reason. No, I have got no reason.

Q. Have you ever been a peace officer?

A. No, sir.

Q. Or an employee of the Federal Government?

A. No, sir.

Q. Did you ever sit as a juror in a criminal case?

A. Yes, sir.

Mr. Davidson: Pass the juror for cause.

The Court: What do you say now?

Mr. Davidson: For the defense?

Mr. Dodds I think we have only one challenge left, if your honor please.

The Court: What do you say as to the defense?

Mr. Davidson: The defense will excuse Mr. Means.

R. HEATH,

(Sworn by the Clerk.)

Examination by Mr. Lee.

Q. You live at Wilson, Mr. Heath?

A. Yes, sir.

Q. How long have you lived there?

A. I have lived there about twelve or thirteen months.

Q. When you went to Wilson where did you come from?

A. I was in Ardmore about three years prior to that.

Q. Are you acquainted with Mr. Champion here?

A. Yes, sir, just casually.

Q. Has he been your attorney in any litigation of yours?

A. No, sir.

Q. Would the fact of you knowing him and meeting him casually, as you say, in any way influence your action in this case? A. No, sir.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. You know of no reason why you could not try it fairly and impartially? A. Not a thing.

Q. You would do that, would you, Mr. Heath, if you were taken as a juror? A. Yes, sir.

Q. How old are you? A. Thirty-four.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Heath, there has been some bank failures out there at Wilson, have there not? A. Yes, sir.

Q. Did you or anyone closely related to you sustain any loss as a depositor in those bank failures?

A. Why, the corporation that I now hold stock in lost a small amount in one of those state banks.

Q. A small amount?

A. That was prior to the time I was connected with the company.

Q. Are you an officer of that corporation now?

A. Yes, sir.

Q. What is the corporation?

A. Well, it is an automobile concern.

Q. Automoible? A. Yes, sir, Heath Motor Company.

Q. Heath Motor Company?

A. Heath Motor Company, yes, sir.

Q. Is that the same Heath Motor Company that was in business here in Ardmore?

A. No, I don't believe there was a company by that name here. I was formerly connected with the Ford people here in town prior to going there.

Q. How long did you say you had been at Wilson?

A. I have only been there about thirteen months.

Q. You lived here in Ardmore prior to that time?

A. About three years, yes, sir.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Anybody ever talk to you who undertook to give you a detailed account of the facts?

A. Oh, I have talked about it at different times but nothing of the facts.

Q. Were those conversations with anybody that purported to know the facts in the case?

A. I don't think so. I think it was really more from the accounts we had read in the papers. I don't think I talked to anyone that attended any of those trials.

Q. Have you ever talked with anyone who expressed an opinion to you as to the guilt or innocence of these defendants? A. Yes, sir, I have.

Q. Have you talked to more than one that expressed their opinion as to their guilt or innocence?

A. No, I believe only the one.

Q. Did you read the newspaper accounts of the trials of these defendants at Hugo and at Muskogee?

A. Both of them, yes, sir.

Q. Did the accounts that you read purport to give the evidence on the trial of the case?

A. I believe one of them did; that was in the Muskogee Phoenix.

Q. Muskogee Phoenix? A. Yes, sir.

Q. Did these newspaper accounts that you read create any opinion in your mind as to the guilt or innocence of these defendants? A. No, sir.

Q. None, whatever? A. No, sir.

Q. And you feel that you can say certainly that you have a free and open mind at this time, uninfluenced by anything that you have read or heard in the past about this case?

A. Yes, sir.

Q. And if accepted as a juror you will enter upon the trial of this case with an open, free, frank and impartial mind and try it solely upon the law and the facts in this case?

A. Yes, sir.

Q. Have you ever been a peace officer? A. No, sir.

Q. Have you ever been an employee of the Federal Government? A. Yes, sir.

Q. In what capacity?

A. About two years and a half in the State Department, Washington, D. C.

Q. In the State Department, Washington, D. C.?

A. Yes, sir.

Q. What state are you a native of? A. Kentucky.

Q. What part of Kentucky are you from? A. Western.

Q. What county?

A. I really can't remember; Fulton was our town.

Q. Fulton was your town? A. Yes, sir.

Q. Would the fact that you have been in the employ of the Federal Government bias or prejudice you to any extent in favor of the Government in the trial of this case?

A. No, sir.

Q. You would not permit that to influence you in the least extent? A. No, sir.

Q. You think you could lay that aside and decide this case solely upon the law and the facts?

A. I think so. It has been about twelve years since I was in the Government service.

Q. How long since you lived in Kentucky, Mr. Heath?

A. Oh, I was only about seven or eight years old when we left there.

Q. Seven or eight years old. Do you know Monde Ayers, in the newspaper business there? A. No, sir, I don't.

The Court: You may be seated. Take your tenth and last challenge for the defense.

Mr. Davidson: Is this the last challenge? Is your honor going to require us to exercise our last challenge before the Government exercises theirs?

The Court: I understood the jury is satisfactory to the Government. They waived. Is the jury satisfactory to the Government now?

Mr. Dodds: The jury is satisfactory to the Government as it stands, your honor.

Mr. Davidson: The defense will excuse Mr. Sittle.

L. F. KIMBROUGH.

(Sworn by the Clerk.)

Examination by Mr. Lee.

Q. You live at Wilson, Mr. Kimbrough? A. Yes, sir.

Q. How long have you lived there?

A. Twenty-five years.

Q. What business are you in?

A. I am in the cotton business.

Q. Do you know anything about the facts in this case?

A. No, sir.

Q. Do you know any reason why you could not try this case fairly and impartially? A. No, sir.

Q. Not acquainted with either W. L. or A. E. Lewis?

A. No, sir.

Q. Or counsel for the defendants?

A. I know Mr. Champion.

Q. Does he have any litigation of yours or handle it as your lawyer? A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. Never has? A. No, sir.

Q. You simply know him? A. Just know him.

Q. Wilson is here in the vicinity of Ardmore, a few miles north? A. Yes, sir.

Q. You say there is no reason why you could not try this case fairly and impartially between the Government and and the defendants? A. None whatever.

Mr. Lee: That's all.

Examination by Mr. Davidson.

Q. Mr. Kimbrough, how long have you lived in Carter County? A. Twenty-five years.

Q. Twenty-five years. You are in the cotton business?

A. Yes, sir.

Q. Have you been in that business all the time?

A. Not all the time.

Q. What other occupation have you had?

A. I was farming until I went into the cotton business.

Q. Farming? A. Yes, sir.

Q. Have you ever been a stockholder in a state or national bank? A. No, sir.

Q. Did you ever lose any money as a depositor in a failed bank? A. Well, not directly I never did, no.

Q. Not directly? A. No.

Q. You have indirectly?

A. Yes, sir, I had the money in the—I was treasurer of a school board and had money in a bank.

Q. You were treasurer of a school board and the school board lost the money?

A. They have not lost it yet, all of it; they have collected some of it.

Q. You are a man of family? A. Yes, sir.

Q. Have you any bias or prejudice against a person charged with violating the national banking laws?

A. No, sir.

Q. Have you ever been a peace officer? A. No, sir.

Q. Have you ever been in the employ of the Federal Government? A. No, sir.

Q. You have read the newspaper accounts of these former trials of these defendants, have you not, Mr. Kimbrough?

A. Yes, sir, I did.

Q. Did those reports purport to give the evidence in those trials? A. Well, it gave some of the evidence, yes.

Q. Did you form any opinion as to the guilt or innocence of these defendants or either of them from the reading of those newspaper accounts? A. No, sir, I did not.

Q. Have you any opinion now as to their guilt or innocence? A. No, sir.

Q. If accepted as a juror in this case will you try it upon the law and the evidence and lay aside any influence—possible influence that these newspaper articles might have had upon your mind? A. Yes, sir.

Q. You think you can do that? A. Yes, sir.

Q. Did you say whether or not you had been a peace officer? A. Never have been a peace officer.

Q. Never have?

Mr. Davidson: Pass the juror.

The Court: Swear the jury to try the case.

(Thereupon the jury is sworn by the clerk to try the case.)

The Court: Mr. Clerk, do you know of any reason why the remainder of this jury should be now held here?

The Clerk: No, sir; this is the last jury case we have to try.

The Court: The members of the jury not engaged in the trial of this case, and to those gentlemen who were brought in here as special jurors, I understand there is nothing further after this case to submit to a jury at the present term of the court, so it affords the court a great deal of pleasure to excuse you from further attendence upon the court, with the compliments of the officers of this court. It is inclement weather and no doubt you are very anxious to return to your homes. You may be excused. Pass out now quickly, if you desire. Of course, you will go to the clerk's office and arrange for what compensation the generous Government pays you for your services.

(Thereupon the jurors referred to pass out of the court room.)

The Court: State your case for the Government.

Mr. Davidson: If your honor please, before the statement of the case, we would like to ask the rule on the witnesses.

The Court: Before the case is stated?

Mr. Davidson: Yes, sir.

The Court: Very well, let all the witnesses in this case, all those who know themselves to be witnesses, stand up and be sworn, both for the Government and the defendants.

(Thereupon the witnesses are sworn by the clerk.)

In the District Court of the United States for the Eastern District of Oklahoma. United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd, Defendants. No. 9346.

Be it remembered, that on this 21st day of January, A. D., 1926, the above entitled and numbered cause came on for trial before the Honorable John C. Pollock, United States District Judge for the District of Kansas, assigned to the Eastern District of Oklahoma, and a jury, at Ardmore, in said Eastern District, whereupon the following proceedings were had and done, to-wit:

Appearances:

Frank Lee, Esq., United States District Attorney for the Eastern District of Oklahoma; and

Nugent Dodds, Esq., Special Assistant to the United States Attorney General,

Attorneys for the Government.

Messrs. Davidson & Williams, of Tulsa, Oklahoma; and

J. B. Champion, Esq., of Ardmore, Oklahoma,

Attorneys for the Defendants.

Thereupon Mr. Dodds made the opening statement to the jury on behalf of the Government.

The Court: Do you care to make any statement for the defense at this time?

Mr. Davidson: If your honor please, it will probably take me about thirty minutes to make the statement, and it is now a quarter of twelve o'clock.

The Court: Well, you may reserve your statement until the Government closes their evidence, if you desire.

Mr. Davidson: Well, if the court will permit us to do that, we would like to do that.

The Court: Very well; call your first witness.

H. H. RHODES,

called as a witness on behalf of the Government and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Rhodes, you have been sworn? A. Yes, sir.
Q. Where do you reside, please?
A. Kansas City, Missouri.
Q. What official position, if any, do you hold there?
A. I am clerk in the Federal Reserve Agent's office.
Q. How long have you been such clerk?
A. In this particular position, about two years.
Q. You are what is known as the record clerk in that office? A. Yes, sir.

Mr. Dodds: Before going any further with this witness' personal testimony, the Government will offer in evidence under the statute the organization certificate of the Federal Reserve Bank as the Government's Exhibit No. 1.

The Court: Very well.

Mr. Dodds: No advantage, if your honor please, in reading this in evidence. It is lengthy. It simply establishes the fact the Liberty National Bank was a member bank of the Federal Reserve Bank and the Federal Reserve Bank was in existence. We will just consider it read. The Government now offers as its Exhibit No. 2, under the statute, the Geographical Designation of the Territorial Jurisdiction of the Federal Reserve District of Kansas City.

The Court: That is District No. 10.

Mr. Dodds: Yes, sir, Federal Reserve District No. 10. The Government now offers, under certificate of the Comptroller of the Currency, the authority to commence business of the Liberty National Bank of Tulsa as Government's Exhibit No. 3.

Under the said statute, the organization certificate of the Liberty National Bank of Tulsa, as Goverment's Exhibit No. 4.

Mr. Davidson: If the court please, may I interrupt Mr. Dodds for a moment? Mr. Dodds, the authorization certificate there shows the original capital stock of the bank, does it not? Now that has been increased from time to time, and do you propose to show the authorized

capital stock of the bank at the time it was taken over by the Security?

Mr. Dodds: That is a matter that counsel can show at any time he desires in the case. The organization certificate goes in as a matter of law, under the statute. It is a statutory method of proving the existence of the bank.

We offer, also, the Articles of Association of the Liberty National Bank of Tulsa, as Government's Exhibit No. 5.

Certificate of payment of capital stock and compliance with the legal requirements, as Government's Exhibit No. 6.

Kindly mark these consecutively as Government's Exhibits 7 to 10, inclusive.

Q. Mr. Rhodes, I hand you Government's Exhibits Nos. 7, 8, 9 and 10. What are Government's Exhibits Nos. 7, 8, 9 and 10, Mr. Rhodes?

A. Stock of the Federal Reserve Bank of Kansas City, issued under various dates to the Liberty National Bank of Tulsa, Oklahoma.

Q. Do you know that that is the identical stock that the Liberty National Bank of Tulsa held? A. I do, sir.

Q. You know the signatures of the officers and the seal of the bank?

The Court: You mean the Federal Reserve Bank.

Q. Yes, sir, the Federal Reserve Bank.

A. Yes, sir.

Q. Now, I ask you, Mr. Rhodes, as an officer whether or not the stock and the various papers we have offered here in evidence indicates to you that the Liberty National Bank of Tulsa was a member bank of the Federal Reserve Bank of Kansas City, District No. 10, from the time the Reserve Bank was organized down to the time the bank closed?

A. It was.

Q. I notice that these canceled certificates do not reach back to the organization of the bank. Have you the other canceled certificates here with you?

A. I have. I have some photostatic copies. There may be some duplicates in there.

Mr. Dodds: We offer, in order, Government's Exhibits 7, 8, 9, 10, 11, 12, 13, 14 and 15, in evidence.

You may take the witness.

Cross Examination by Mr. Davidson.

Q. Mr. Rhodes, you say the Liberty National Bank was a member bank of the Federal Reserve District No. 10 at the time it was closed? A. Yes, sir.

Q. Now, as a matter of fact, don't your records show that the Liberty National Bank was not closed, but was taken over by the Security National Bank of Tulsa, under a consolidation and merger?

A. Well, it was a member—we called it, statistically, a member until its stock was closed out; that is how we refer to it.

Q. Well, the stock was closed out by it being taken over and consolidated with the Security National Bank of Tulsa, wasn't it? A. Yes, sir.

Q. The Liberty National Bank was sold to the Security National Bank of Tulsa.

A. I know it was taken over by the Security National Bank, yes, sir.

Q. Don't your records show a sale of the Liberty National Bank to the Security National Bank?

A. That part of the work I had nothing whatever to do with. Merely on my records, it showed the stock was closed out on such and such a date, and my knowledge is that it was formally acquired by the Security National Bank.

Q. Now the stock that was closed in the account of the Liberty National Bank was re-issued to the Security National Bank, was it not?

A. The stock was liquidated out to a liquidating agent, the old Liberty National Bank stock.

Q. Well, do you know whether or not the stock was then issued to the Security National Bank? A. I don't know.

Q. You don't know? A. No, sir.

Q. Now, Mr. Rhodes, your records show that the capital stock of the Liberty National Bank, after its first authorization, was increased from time to time, does it not?

A. Yes, sir.

Q. And what was the amount of the authorized capital stock of the Liberty National Bank at the time the Security took over the Liberty?

A. I would have to refer to some other records that I have here but not with me at this time.

Q. Have you them here?

A. They are in the anteroom.

Q. I wish you would do that, please, Mr. *Roach*, so that we can get that in the record.

(Thereupon the witness went to secure his records.)

Mr. Dodds: While we are waiting I want to ask if it is agreeable to counsel that I withdraw from the files the geographical designation of the district because it covers the whole United States and it is very expensive to put them in a case.

Mr. Davidson: You will put in a copy of it?

Mr. Dodds: Well, a copy of the part that refers to this territory.

Mr. Davidson: I don't think anything ought to be offered in evidence except what is pertinent, and I think that ought to be left in here.

The Court: Well, gentlemen, if you can make an agreement among yourselves do that some later time. If not, we will see about it.

Mr. Davidson: If your honor please, if that exhibit covers all the United States and matters that does not pertain to this district we want to object to the offering of it in evidence.

The Court: Well, only so far as it relates to the case.

Q. Have you the record now so you can answer the question, Mr. Rhodes.

A. I have a photostatic copy of the record.

Q. What does it show the capital stock of the Liberty National Bank to be at the time the Security National Bank took it over?

A. First entry here shows one hundred and one thousand dollars capital and surplus.

Q. One hundred and one thousand? A. Yes, sir.

Q. Don't your records show the authorized capitalization was two hundred and fifty thousand dollars at the time?

The Court: At what time?

Q. At the time the Liberty was sold to the Security National?

A. I beg your pardon, the opening entry on this book was back in 1914.

The Court: We are not concerned about that back there at all.

A. I misunderstood you.

Q. I want the authorized capitalization at the time the Liberty National Bank was sold to the Security in November, 1923.

A. I submit my file here, a letter here November 10, 1923, signed by Mr. Pickens in which he advises us that the

bank was purchased by the Liberty National Bank, that is, the Security National Bank purchased the Liberty National Bank and wanted to retire, wanted to know what to do in order to retire the stock. After this was reported into Washington and necessary papers furnished, it was reported back by the Federal Reserve Board November 23, 1923, that the Liberty National Bank of Tulsa contemplated going into voluntary liquidation and a liquidating agent, it would be necessary for a liquidating agent to be appointed, which the records show was done in due course, and the stock involved was two hundred and ten shares. Authorization was approved and granted by the board for us to pay the liquidating agent on that basis, which was done February 11, 1924.

Q. Now, after the Security National Bank purchased the assets of the Liberty National Bank, the Liberty National Bank then went into liquidation, as I understand, at least a liquidating agent was appointed? A. Yes, sir.

Q. And the stock in the Federal Reserve Bank was closed out with that liquidating agent? A. Yes, sir.

Q. Now, will you let me take a letter from Mr. Pickens, there, that you referred to. Mr. Rose, the letter that you referred to as signed by Mr. Pickens was from his as Assistant Cashier of the Security National Bank, was it not?

A. Yes, sir.

Mr. Davidson: We will ask the reporter to mark this letter as Defendants' Exhibit No. 1, and the defendants offer the letter in evidence, your honor please.

(The Defendants' Exhibit No. 1 is read to the jury.)

By Mr. Davidson:

Q. Now, Mr. Pickens, you have not yet——

The Court: Mr. Rose.

Mr. Davidson: Or Mr. Rose; I beg your pardon.

Q. Mr. Rose, you have not yet answered my question as to what your records show was the authorized capital stock of the Liberty National Bank at the time the Security purchased its assets?

A. $350,000.00, according to the records.

Q. That was the capital and surplus, wasn't it?

A. Yes, sir.

Q. There was $250,000.00 authorized capital and the surplus was $100,000.00, wasn't it?

A. Well, this does not show the exact amount; it puts them together under the column of capital and surplus.

The Court: Is that all?

Mr. Davidson: That is all, if your honor please.

The Court: Stand down. Call the next.

ROBERT LEBUS,

was called as a witness on behalf of the Government and having been previously duly sworn testified as follows:

Direct Examination by Mr. Dodds.

Mr. Davidson: Your honor please, it is agreeable to the defense, if the Government desires to have it done, that a copy of this letter be left in lieu of the original.

Q. Mr. LeBus, where do you reside? A. Tulsa.

Q. How long have you lived there? A. Twenty years.

Q. What is your business there now?

A. Security National Bank.

Q. Before you became an employe of the Security National Bank, what was your business?

A. I was with the Liberty National Bank.

Q. How long were you with the Liberty National Bank?

A. Eight years.

Q. That was the bank that the two Lewises here were president and vice-president of, the defendants.

A. It was, yes, sir.

Q. You were with them eight years? A. Yes, sir.

Q. What official position did you occupy in that bank?

A. At the time I left there?

Q. Yes, at the wind-up.

A. Assistant cashier.

Q. Now, during the time that you were there, Mr. LeBus, Mr. Allie E. Lewis was president and William Lloyd Lewis vice-president all of that time? A. They were.

Q. I ask you whether or not they were active officers, present at the bank continually? A. They were.

Q. And whether or not they transacted business of the bank along from day to day? A. They did.

Q. And who were the other officers of the bank, Mr. LeBus, at that time?

A. Mr. R. C. Lamprich was cashier.

Q. We will speak of the year 1923?

A. A. E. Lewis was president, W. L. Lewis and C. G. Garrett, vice-presidents, R. C. Lamprich, cashier; Mr. Goekel and myself were assistant cashiers.

Q. Where was the bank located? A. Third and Boston.

Q. In the City of Tulsa? A. City of Tulsa.

Q. County of Tulsa, and State of Oklahoma; is that right? A. Yes, sir.

Q. I will ask you whether, at all times during the time that you were a member of the bank there, you dealt with the Federal Reserve Bank as a member bank, in due course?

A. We did.

Q. Mr. LeBus, I hand you Government's Exhibit No. 17; what is it, please?

A. It is a minute book.

Q. You know—it is the old minute book?

A. It is a minute book of the Liberty National Bank.

Q. From what date?

A. From August 30, 1911, up to and including August 8, 1922.

Q. Yes. I hand you Government's Exhibit No. 18?

A. That is a minute book of the Liberty National Bank from August 26, 1922, up to and including April 18, 1924.

Q. Yes, up to and including the liquidation of the bank?

A. Yes, sir.

Q. All right. These books are marked for identification and the pertinent part will be offered in evidence.

Mr. Davidson: Well, we want to know what the pertinent parts are that he is offering in evidence.

Mr. Dodds: I say they will be in due course.

Mr. Davidson: You are not offering them now?

Mr. Dodds: No, I am not offering them now. I am identifying them by this witness.

Q. Mr. LeBus, I will ask you whether these two minute books were regularly kept books in the due course of the bank?

A. Do you mean that they were kept after each meeting?

Q. No, I don't mean that. I asked you whether those minute books were actual books and records of the Liberty National Bank of Tulsa? A. They were.

Q. I hand you Government's Exhibit No. 19, Mr. LeBus, marked for identification No. 19; what is it, please?

A. It is a discount register of the Liberty National Bank from May 23, 1917, up to and including February 9, 1923, part of that days business on there; I don't believe all of it.

Q And this?

A. This is a discount register of the Liberty National Bank.

Mr. Dodds: That is Exhibit 19, Mr. Reporter, the one identified as from February 10, 1923, up to and including November 3, 1923.

Q. The last one was No. 20. Government's Exhibit No. 21, Mr. LeBus; identify it, if you can?

A. Blotter of the Liberty National Bank from November 13, 1922, up to and including November 3, 1923.

Q. What do you mean by a "blotter" of the bank, Mr. LeBus?

A. A blotter is a record where notes are paid or payments made on, or new notes are entered up.

Q. Government's Exhibit No. 22, Mr. LeBus?

A. The expense book of the Liberty National Bank from April 7, 1921, up to and including December 30, 1922.

Q. And Government's Exhibit No. 23?

A. It is an expense ledger of the Liberty National Bank, from January 2nd, 1923, up to and including November 3, 1923.

Q. Now just what do you mean by expense ledger or expense book?

A. There is a book kept showing the distribution of all expenses paid out by the bank.

Q. Mr. LeBus, I hand you Government's Exhibit No. 24. Do you know what the paper is? A. I do.

Q. What is it?

A. It is a note dated June 8, 1923, due 90 days after date, in the amount of $17,500, payable to the order of the Liberty National Bank, signed by Simon W. Knoten.

Q. What is the number of the note?

A. The note is numbered 20,190.

Q. You know that that was a note of the Liberty National Bank, part of its paper? A. I do.

Q. Government's Exhibit No. 25?

A. Note dated May 19, 1923, in the amount of $23,313.72, due 90 days after date, payable to the order of the Liberty National Bank, secured by 432 shares of Sinclair Oil Company stock, signed by J. W. McDonnell, due November 1st, 1923, No. 20,057.

Q. You know that that last note you read was a note of the Liberty National Bank of Tulsa and part of its negotiable paper?

A. It was—I did not see the date it was stamped paid; I would rather see the date it was stamped paid before I say whether it was or not.

Q. June 27, 1924? A. Yes, it was.

Q. I hand you Government's Exhibit No. 26?

A. A note dated June 14, 1923, in the amount of $5,000, due on demand, payable to the Liberty National Bank, signed by E. Forrest Hayden, No. 20,217.

Q. Was that a part of the paper of the bank there, negotiable paper belonging to the bank while you were in its employ? A. It was.

Q. Government's Exhibit No. 27?

A. Note dated September 16, 1923, in the amount of $10,000, due 90 days after date, payable to the order of the Liberty National Bank, signed by Wm. O. Bohnefeld, due date 12-15-23, No. 0417.

Q. That was a part of the assets of the bank, part of its negotiable paper during the year 1923? A. It was.

Q. Government's Exhibit No. 28?

A. Note date June 27, 1923, in the amount of $10,000, due four months after date, payable to the order of the Liberty National Bank, signed by M. A. Houser, due June 27, '23, No. 20,284.

Q. Was that part of the assets of the bank while you were there? A. It was.

Q. During the year 1923? A. It was.

Q. Government's Exhibit No. 29?

A. Note dated August 27, 1923, in the amount of $20,000, due 90 days after date, payable to the order of the Liberty National Bank, signed Lincoln Company, incorporated, by R. C. Lamprich, secretary and treasurer, due November 27, 1923, No. 20,519.

Q. Was that there and a part of the assets of the bank during the year 1923, while you were there? A. It was.

Q. Government's Exhibit No. 30?

A. A note dated May 24, 1923, in the amount of $33,000, due on demand, payable to the order of the Liberty National Bank signed by The Mingo Company, by R. C. Lamprich, secretary and treasurer, No. 20,077.

Q. That was part of the assets of the bank during the year 1923? A. It was.

Q. After it is dated, on May 24? A. It was.

Q. Government's Exhibit No. 31?

A. Note dated July 16, 1923, in the amount of $34,000, due on demand, payable to the Liberty National Bank, signed by A. E. Lewis, No. 20,374.

Q. I ask you the same question: Was that a part of the assets of the bank after July 16, in the year 1923?

A. It was.

Q. Government's Exhibit No. 32?

A. Note dated September 15, 1923, in the amount of $1,000.00 due on demand, payable to the order of the Liberty National Bank signed by A. E. Lewis, No. 20577.

Q. Is that a part of the bank's negotiable paper after September 15, 1923, from then on? A. It was.

Q. I show you Government's Exhibit No. 33; what is it?

A. A note dated September 15, 1923, in the amount of

$1,000.00, due on demand, payable to the order of the Liberty National Bank, signed by W. L. Lewis, No. 20579.

Q. Was that last note a part of the paper of the bank during the year 1923? A. It was.

Q. Government's Exhibit 34?

A. Note dated July 16, 1923, in the amount of $34,000.00, due on demand, payable to the order of the Liberty National Bank, signed by W. L. Lewis, numbered 20373.

Q. Is that a part of the assets of the bank after its date on July 16, 1923? A. It was.

Q. I hand you Government's Exhibit No. 35, will you identify that, please?

A. Yes, sir, that is a note dated July 2, 1923, in the amount of $15,000.00, due ninety days after date, payable to the order of the Liberty National Bank, signed by Mason Kittess, due September 30, 1923, 106 West Fifth street, Tulsa, Oklahoma, No. 22343.

Q. I ask you if that note came into the hands of the bank on its date July 2, as far as you know?

A. As far as I know. I would have to look at the records to be sure.

Q. You know it was in the bank as a matter of fact during the life of the note itself? A. Yes, sir.

Mr. Dodds: Take the witness.

The Court: Cross examine.

Cross Examination by Mr. Davidson.

Q. Mr. LeBus, you said that during the time you were with the Liberty National Bank, W. L. Lewis was vice-president. As a matter of fact, he was not vice-president all of the time was he?

A. Might not possibly have been when I went there. There was quite a few changes; he might have been cashier and then vice-president later. Mr. Dodds asked me, I understood the latter part of 1923, the way I answered the question.

Mr. Davidson: No further questions.

(Witness excused.)

The Court: I think we will suspend at this time for lunch. Mr. Marshal, you will take the jury to lunch, and you will provide a convenience to keep them together until the case is finally determined. During this time the jury will allow no one to talk to them about this case, nor allow anyone to talk in their hearing about the case.

If anyone commences to talk to you about the case or talking in your hearing, it will be your duty to tell them you are a juror. Do not discuss the case among yourselves until it is finally submitted to you for your verdict.

Mr. Williams: May I ask the court to give the instruction as to the newspapers.

The Court: Yes. If there is anything in the public press about this case, do not read it. It is entirely improper to get any idea whatever regarding the merits of this case, or anything that will influence your mind except from the testimony of the witnesses offered and received here in court, or from the arguments of counsel or the charge of the court. Do not get anything outside of the court.

Mr. Lee: It is customary in this district for the bailiff to be sworn, if the court please.

The Court: Very well.

(Thereupon two bailiffs were duly sworn by the clerk to take charge of the jury during the recess of the court.)

The Court: Very well, gentlemen, you may retire with the bailiffs and return back here at two o'clock p.m.

(Thereupon court took a recess until two o'clock p.m.)

2.00 o'clock p.m., parties present as upon adjournment, court reconvened and the following proceedings were had, to-wit:

The Court: Proceed with the trial.

Mr. Dodds: The next witness is Mr. Griffee.

ORVILLE A. GRIFFEE

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Griffee, what is your full name, please?
A. Orville A. Griffee.
Q. Where do you live? A. Kansas City, Missouri.
Q. What official position do you hold, if any, Mr. Griffee?
A. National Bank Examiner.
Q. How long have you been a National Bank Examiner?
A. About six years.
Q. And you are National Bank Examiner of District No. 10? A. Yes, sir.
Q. That is, Kansas City Reserve Bank? A. Yes, sir.

Q. How many years have you been examiner, pardon me?

A. About six years.

Q. About six years. What did you do before that, Mr. Griffee? A. I tried to run a bank.

Q. I see. You had some bank experience, then, before that time, yourself? A. That is all I have ever done.

Q. Your work has been generally not of an accountant, has it? A. Yes, sir.

Q. Now, Mr. Griffee, I want to ask you the general question as to what is the purpose and use of the minute book of a bank in so far as the Bank Examiner's examination of a bank is concerned?

Mr. Davidson: To which the defendants each object, because it calls for a conclusion of the witness, as immaterial, and tends to prove or disprove no material fact involved in any count of the indictment.

The Court: Well, this gentleman has given some evidence of expert knowledge in the business; he may answer.

Mr. Davidson: Note an exception.

A. Well, the minute book of the bank is the only means by which the examiner, or any other interested party, can determine whether or not the bank's affairs are being properly administered by its board of directors.

Q. When you go into a bank, Mr. Griffee, to examine it, I will ask you whether, as part of your examination, you include an examination of the minute book thereof?

A. Yes, sir, always.

Q. And I ask you, as to its importance as a book of the bank, what is its relative importance as compared with other books of the bank, from the standpoint of an examination of the bank and the disclosing of its affairs to the Bank Examiner?

Mr. Davidson: To which the defendants each object, because it calls for a conclusion of the witness.

The Court: Well, we will let the jury judge of that from the office it performs as stated by the witness.

A. Well, I say——

The Court: No, wait a minute.

A. Pardon me.

The Court: As far as a comparison with the other books of the bank, I don't think that is material, but he has stated its purpose and use and examination, and so on.

By Mr. Dodds: Now, I will withdraw the last question that was objected to [] counsel.

Q. Witness, upon what book of the bank do you depend for such information as you customarily obtain as to whether or not the loans made by the bank have been made with the approval, or have been ratified and approved by the board of directors?

The Court: Well, now, you mean that question to him as a National Bank Examiner?

Mr. Dodds: Yes.

The Court: All right, if you include that in your question, he may answer.

Mr. Davidson: To which the defendants each object, for the reason it does not prove or tend to prove any material fact involved in any count in the indictment.

The Court: He may answer, including the fact that it is a National Bank Examiner examining the bank.

Mr. Davidson: To which we except.

The Court: Very well.

A. The minute book.

The Court: Read the question.

(The last question is read by the reporter.)

A. The minute book.

Q. Upon what book of the bank do you, as a National Bank Examiner, depend for your knowledge as to whether or not the board of directors of the bank meet and function as a board?

Mr. Davidson: To which the defendants each object, for the reason that it is immaterial, does not prove or tend to prove any material fact involved in any count of the indictment.

The Court: He may answer.

Mr. Davidson: Note an exception.

A. The minute book.

Q. Upon what book of the bank do you depend, as a National Bank Examiner, in your official examiantion of a bank, to determine whether or not the board of directors of a bank examine and approve the expense book of a bank?

Mr. Davidson: To which the defendants each make the same objection, upon the same ground.

The Court: He may answer.

Mr. Davidson: And upon the further ground that the question is leading and suggestive.

The Court: He may answer.

Mr. Davidson: Note an exception.

A. The minute book.

Q. Upon what book of a national bank do you, as a National Bank Examiner, depend in making a determination as to whether or not the stockholders' meetings of these national banking associations which you are examining are duly held?

Mr. Davidson: To which the defendants each make the same objection, upon the same grounds.

The Court: The same ruling. Proceed.

Mr. Davidson: Note an exception.

A. Well, some banks keep separate minute books, but the proceedings of a shareholders' meeting are usually found in the book in which they record also the transactions of its board of directors.

Mr. Dodds: That is all; take the witness.

Mr. Davidson: Stand aside.

(Witness excused.)

JOHN T. KRAMER,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Kramer, where do you live? A. Tulsa.

Q. Your full name is John T. Kramer? A. Yes, sir.

Q. How long have you lived in Tulsa County?

A. Twenty-one years.

Q. What is your business, Mr. Kramer?

A. Farming and stock raising.

Q. I ask you whether or not you were a shareholder in the Liberty National Bank of Tulsa, during the year 1923?

A. Yes, sir.

Q. And some years prior thereto? A. Yes, sir.

Q. I ask you whether or not you were a director of the Liberty National Bank of Tulsa during the year 1923, and sometime prior thereto? A. Yes, sir.

Q. Mr. Kramer, did you act as an active director of the bank during the year 1923? A. No, sir.

Mr. Davidson: If your honor please, we object to that question, and move the answer be excluded because it is framed in such a way that it calls for a conclusion of the witness as to whether or not he is an active director. Under the law, if he is a director.

The Court: No question about that, but I think the question is proper as to whether he was actually performing the duties a director usually performs in fact.

Mr. Davidson: That is a question as to what that means.

The Court: That is true, but that is defined by the law and by the by-laws of the bank, and so on.

Q. Mr. Kramer, were you present at a meeting of the stockholders, annual stockholders meeting of the Liberty National Bank of Tulsa, held on the 9th day of January, 1923? That would be the last January it was in existence?

A. No, sir.

Mr. Davidson: Now, just a moment, Mr. Kramer, please. The defendants each object to this question upon the ground that the counts in the indictment based upon the stockholders' meeting of January 9, 1923, cannot, under any circumstances, be a criminal offense under the statute, 5209, and for the further reason that under the fact that he was not present, and the recitation in the minutes of that meeting that he was present would not be a violation of the law, and for that reason does not tend to prove or disprove the issues involved in these counts.

The Court: I will take care of this later on, but you haven't proved as yet you have any record in existence.

Mr. Dodds: No, I understand that, your honor please.

The Court: You might offer your record.

Mr. Dodds: I will offer in evidence now Government's exhibit No. 18, which was heretofore identified by the witness LeBus.

The Court: Well, are you offering——

Mr. Dodds: The pages, if your honor please, that I will mention; pages 17, 19, 21, 23, 25, 27, 29, 33, 39, 41, 43, I offer them in evidence at this time.

Mr. Davidson: To which the defendants each object for the reason, first that the pages offered in evidence refer to different transaction charged on in different counts of the indictment, and ought not to be offered together but separately, and for the further reason that

the exhibits or exhibit that is now offered in evidence does not establish, if true any violation of the criminal statutes of the United tSates, and for the further reason that the indictment itself upon which these counts are founded, does not state a crime or an offense under the laws of the United States, and I know, if your honor, please, it is not the proper practice to raise the question in the evidence——

The Court: I say, I will have to take care of this entire matter later on.

Mr. Davidson: We would like, if your honor please, because most of this testimony will hinge on this question and we have some authorities we would like to submit to your honor, and I suggest it would be well to submit them at this time, so that it might possibly eliminate a lot of this testimony. We have a number of authorities we want to submit to your honor on this question.

The Court: Of course, in an indirect way, you are asking me now to sustain a demurrer to the counts in this indictment charging these matters because it doesn't state a public offense.

Mr. Davidson: No, your honor, we are not doing that. We are asking you this; to refuse to permit them to prove the offense charged in the indictment by evidence that is immaterial and does not establish the offense that they charge.

The Court: Well, I don't know what evidence they will offer, but if that is the only purpose, I will allow them to go ahead with their evidence and see what they prove, and then I will take care of it.

Mr. Davidson: Let me suggest this, your honor. I think we will make time by thrashing this thing out here a little while, and we have three decisions of the Federal Court and there are no other decisions to the contrary that hold that the books of the bank referred to are books of account of the bank.

The Court: I will hear you on the conclusion of the evidence on a motion to instruct a verdict on these counts. That is the proper place.

Mr. Davidson: Ordinarily that is but they have a lot of witnesses here on this line of testimony that we think is incompetent.

The Court: I understand, but on a motion to instruct a verdict, we will get rid of it finally.

Mr. Davidson: Exception.

Mr. Dodds: The pages that I want are offered in evidence, and I will ask the reporter to mark them.

The Court: Let me understand one thing. The precise question was raised and argued and determined by Judge Kennamer or Judge Williams.

Mr. Dodds: I understand——

Mr. Davidson: No, not this question, if your honor please. There was this question raised on the demurrer to the indictment, the question of whether or not this indictment charges an offense. That was passed on by Judge Kennamer without any prolonged argument, and after the other case had been tried, he says, "I will take this matter up when this case comes on for trial," but he overruled it for the time being.

The Court: Well, let me ask you this: Of course, you are here trying this case, you have briefed the case and know what you are talking about?

Mr. Dodds: Yes.

The Court: All right, go ahead.

Mr. Dodds: Kindly mark pages 17, 19, 21, 23, 25, 27, 29, 33, 39, 41 and 43 as Government's exhibits.

(The pages indicated are marked as Government's Exhibit No. 36.)

Mr. Davidson: Are you going to mark them separate exhibits?

Mr. Dodds: Not unless counsel insist upon it.

Mr. Davidson: We object to them being marked as one exhibit.

Mr. Dodds: Well, we will mark them separately, then.

The Court: No, just let them be marked as one exhibit, because they will have to be used separately anyhow when he comes to a part of the proof in evidence. I think it will be all right this way.

Mr. Davidson: We want the record to show an objection to each page of the record that is offered separately, because they fall under different counts of the indictment.

The Court: All right, it may stand that way.

Mr. Davidson: Exception.

Mr. Dodds: I wish to read Government's Exhibit No. 36 to the jury.

(Thereupon Mr. Dodds reads to the jury page 17 of Government's Exhibit 36, down to the signatures.)

Mr. Dodds: Signed by the secretary, with the name of E. A. Ross and the name of A. E. Lewis, respectively, secretary and chairman, and then a certification that the —followed by a certification that they were the minutes signed with the name E. A. Ross and with the name A. E. Lewis.

Q. Now, Mr. Kramer, I have read your name from the minutes here, Government's Exhibit No. 36, the minutes of the stockholders' meeting—purported stockholders' meeting on the 9th day of January, 1923; I ask you whether or not you were present at such a meeting?

A. I was not.

Mr. Davidson: If your honor please, the defendants object to the question, and also we want to make this further objection to the introduction of those minutes, that there is no evidence in this record yet to show that either of these defendants made these entries or directed them to be made.

The Court: Well, of course, they will either have to have made them or have to have been made under their direction, as officers of the bank, but we can't prove a whole case at once; we will have to prove a part and then connect it up.

Mr. Davidson: I know, but the record here he offers to prove this by is not competent evidence until they show first that they either made the entries themselves or caused them to be made, or they were made by their direction.

The Court: That is probably true, but if it is not connected up I will take care of it. Proceed.

Mr. Davidson: Note an exception.

Mr. Dodds: Page 19 of the minute book.

(Thereupon, Mr. Dodds reads the minutes at page 19, under exhibit 36, down to and including the name of John T. Kramer.)

Q. I ask you whether or not you were present at a board directors' meeting on the 9th day of January, 1923?

A. No, sir.

Mr. Davidson: To which the defendants make the same objection, for the same reasons.

The Court: The same ruling.

Mr. Davidson: Exception.

Q. Page 21, the directors of the Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma——

(Thereupon, Mr. Dodds reads Page 21 of the minute book, being part of Government's Exhibit 36.)

Q. I ask you, Mr. Kramer, Whether you were present at a meeting of the Board of Directors of the Liberty National Bank, Tulsa, Oklahoma, on February 27, 1923?

A. No, sir.

Mr. Davidson: To which the defendants each make the same objection, and for the same reason.

The Court: Same ruling. Proceed.

Mr. Davidson: Note an exception.

Q. I will ask you whether or not on February 27, 1923, you had submitted to you, at any time or place or under any conditions a report of the discount committee of the Liberty National Bank of Tulsa, Oklahoma, covering loans from 16,061 to 17,085?

A. No, sir.

Mr. Davidson: To which the defendants each object for the same reason.

The Court: The same ruling.

Mr. Davidson: Exception.

Q. I ask you whether or not on February 27, 1923, you examined or approved an expense book of the bank, either one?

A. No, sir.

Mr. Davidson: Each defendant makes same objection for the same reason.

The Court: Same ruling.

Mr. Davidson: Note an exception.

Mr. Dodds: Page 23 of the minute book.

(Thereupon, Mr. Dodds reads page 23 of the minute book, being a part of Government's Exhibit No. 36.)

Q. I ask you, Mr. Kramer, whether you attended a meeting of the Board of Directors on March 20, 1923?

A. No, sir.

Mr. Davidson: To which each defendant objects for the same reason.

The Court: Same ruling.

Mr. Davidson: Exception.

Q. I ask you whether, on March 20, 1923, you had presented to you at any time or place on that date a report of the discount committee on loans from 17,086 to 18,050?

A. No, sir.

Mr. Davidson: To which the defendants and each of them make the same objection for the same reason.

The Court: Overruled.

Mr. Davidson: Exception.

Q. Whether or not you examined and approved, or either, the expense book of the bank at that time?

A. I did not.

Mr. Davidson: To which each defendant makes the same objection, for the same reason.

The Court: Same ruling.

Mr. Davidson: Note an exception.

Q. Page 25 of the minute book.

(Thereupon, Mr. Dodds reads page 25 of the minute book, being a part of Government's Exhibit No. 36.)

Q. I ask you, Mr. Kramer, whether you attended any meeting of the Board of Directors on April 24, 1923?

Mr. Davidson: Now, just a moment, Mr. Kramer. If your honor please, in order to save the time of making these objections all of the time, may we have the record show after each question on this minute book an objection on our part and on the same ground and reason that we have made these other objections, and an exception?

The Court: Yes, sir, for any ground or reason that you have stated up to date, yes.

Mr. Davidson: Yes, and let that show after each one of these questions, because there will be a lot of that same kind of stuff.

The Court: Yes, sir.

Q. Now, Mr. Kramer, you stated you were not present at that meeting of April 24, 1923?

A. I was not.

Q. I ask you whether you ever heard a report of the discount committee of that bank or of this board of directors anytime on notes numbered 18,051 to 19,056, inclusive?

A. No, sir.

Q. I ask you whether you examined an expense book of the bank on April 24, 1923? A. No, sir.

Q. Page 27 of the minute book?

(Thereupon Mr. Dodds reads page 27 of the minute book, being a part of Government's Exhibit No. 36.)

Q. Mr. Kramer, did you attend a meeting of the board of directors of the Liberty National Bank on Tuesday, May 22nd, 1923? A. No, sir.

The Court: Well, put your question, Mr.—Ask him whether he was present at any meeting about that time,

at which the—your general, instead of specifically, as you are doing?

Mr. Dodds: Yes, all right.

Q. I ask you the general question, Mr. Kramer, whether you were present at any meeting of the Board of Directors on or about the 22nd day of May, 1923? A. No, sir.

Q. And whether at or about that time—whether at or about that time you had presented to you in any way, shape, manner or form a report of a discount committee on the loans of that bank numbered 19,057 to 20,070, inclusive? A. No, sir.

Q. They being the loans made since the last purported meeting. Did you examine the expense book of the bank on the 22nd day of May or any time around then? A. No, sir.

Q. "The directors of the Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Tuesday, June 19, 1923, with the following directors present, to-wit: A. E. Lewis, W. L. Lewis, E. A. Ross, H. N. Greis, John T. Kramer. A. E. Lewis was chosen Chairman and E. A. Ross, Secretary. Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from No. 20071 to 20253, both inclusive. The expense book was also examined and approved. There being no further business before the meeting, the board adjourned. A. E. Lewis, Chairman. Attest: E. A. Ross, Secretary."

Mr. Kramer, did you attend a meeting of the board of directors of the Liberty National Bank on or about the 19th day of June, 1923? A. No, sir.

Q. And I ask you whether or not a report of any discount committee was made to you on or about that time?

A. No, sir.

Q. Or whether you approved any such report?

A. No, sir.

Q. I ask you whether or not the expense book of the bank was presented to you and examined and approved by you at any time around the 19th of June, 1923? A. No, sir.

Q. "The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Friday, July 13th, 1923, with the following directors present, to-wit: A. E. Lewis, W. L. Lewis, E. A. Ross, H. N. Greis, John T. Kramer. A. E. Lewis was chosen Chairman and E. A. Ross, Secretary. Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans

and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from No. 20254 to 20362, both inclusive. The expense book was also examined and approved. The following resolution was adopted: Resolved, that the President, Vice-President and Cashier of this bank are and each of them is hereby authorized to effect loans from time to time on behalf of this bank from the Mechanics & Metals National Bank of New York, the proceeds of such loans to be credited to this bank by the said Mechanics & Metals National Bank on its books; and, for such loans to make, execute and deliver the promisory notes of this bank, and, if required by the said bank, to pledge as collateral security for such loans and for other liabilities of this bank, any of the bonds, stocks, bills receivable or other securities or property of this bank, upon such terms as to lien upon, resort to, and application of such collateral and its proceeds as may be satisfactory to the said bank; and that such officers are respectively authorized, in lieu of effecting and securing loans as aforesaid, to procure from time to time to be rediscounted by the said Mechanics and Metals National Bank for this bank any of the bills receivable held by this bank, upon such terms as to collateral security and otherwise as may be satisfactory to the said bank. There being no further business before the meeting, the board adjourned. A. E. Lewis, Chairman. Attest: E. A. Ross, Secretary."

Mr. Kramer, were you present at a meeting of the board of directors of the Liberty National Bank on or about July 13, 1923? A. No, sir.

Q. Was there a report of the discount committee of that bank presented to you and approved by you and examined by you as to any of those notes 20,264 to 20,362, inclusive, the loans just prior to July 13, 1923, back to the prior purported meeting? A. No, sir.

Q. Page 39: "The directors of The Liberty National Bank of Tulsa, Oklahoma, assembled with the National Bank Examiner, at Tulsa, Oklahoma, at 3:00 o'clock P.M., Saturday, August 11th, 1923, with the following directors present: A. E. Lewis, E. A. Ross, W. L. Lewis." I will withdraw the question. Page 41 of the minute book: "The directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Thursday, August 23rd, 1923, with the following directors present: A. E. Lewis, John T. Kramer, W. L. Lewis. A. E. Lewis was chosen Chairman and W. L. Lewis, Secretary. A motion was made by John T. Kramer and seconded by A. E. Lewis, that E. A. Ross be re-elected as Director, as through an oversight on

his part and on the part of the other directors he was automatically disqualified as a director on account of having pledged the full amount of his stock as collateral to a loan. There being no further business before the meeting the board adjourned. A. E. Lewis, Chairman. Attest: W. L. Lewis, Secretary."

Mr. Kramer, were you present at a meeting of the board of directors on or about August 23, 1923? A. No, sir.

Q. Did you make a motion at that meeting or at any other meeting during the year of 1923 that E. A. Ross should be re-elected as a director? A. No, sir.

Q. Did you know at any time during the year 1923 that E. A. Ross had been disqualified and ceased to be a director?

A. No, sir.

Q. Did you know of his re-election, that is, as a director, any time during that year? A. No, sir.

Q. When was the first time that you ever heard that you remember of E. A. Ross being re-elected as a director?

A. When it came up in court the trial before this, the first time I ever heard of it.

Q. "The directors of the Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Monday, September 24th, 1923, with the following directors present, to-wit: A. E. Lewis, W. L. Lewis, E. A. Ross, H. N. Greis, John T. Kramer. A. E. Lewis was chosen Chairman and E. A. Ross, Secretary. Thereupon, the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from No. 20,363 to 20,614, both inclusive. The expense book was also examined and approved. The following resolutions were adopted:" Follows a long resolution concerning the borrowing of money that we do not care anything about reading into the record unless the defendants desire. I will ask you whether or not you were present at a meeting of the board of directors on or about September 24, 1923, Mr. Kramer?

A. No, sir, I was not.

Q. Whether or not you heard of a report of a discount committee of that bank on these loans made in September prior to the 28th and in August back to the last purported meeting being loans 20363 to 20614, both inclusive? A. No, sir.

Q. I ask you if you had presented to you or looked at or examined or approved any of those expense books of the bank on or about September 24, 1923? A. No, sir.

Q. Well, Mr. Kramer, when was the last time as a matter

of fact that you ever attended a meeting of the board of directors of that bank?

A. Well, when I was first taken into the bank——

Q. When was that?

A. I think sometime in 1917. I attended several that year, and after that I told them to leave me off each year, that I couldn't possibly attend the directors meetings and they continually told me that that didn't make any difference but I asked them to relieve me each year.

Q. Now, as a matter of fact, did you attend any meeting at all of the board of directors at any time or place during the year 1923? A. No, sir.

Q. During the year 1922? A. No, sir.

Q. I ask you now, Mr. Kramer, whether you ever knew of the taking of a note signed by Simon W. Knoten, being note No. 20,190, dated June 8, 1923, in the sum of $17,500, whether you ever knew that that loan was made? A. No, sir.

Mr. Davidson: Now, the defendants each object to that line of examination for the reason that the offense charged on in the indictment are the reports of the discount committee on loans of the bank, is one charge, and the entry in the minute book of the directors approving those reports. Now, as to the identity of these loans and what they were for and who made them and things of that kind is wholly immaterial to any issue in this case.

The Court: You see your evidence now tends to show that while the minutes show he was there approving the report of the discount committee he was not there, and was not there any time of the year, and was not acting on these loans at all.

Mr. Dodds: Yes, if your honor please. I might state if your honor please, this is the purpose of introducing this and a number of exhibits will be offered immediately after these exhibits that I am seeking to introduce that were identified by the witness LeBus this morning. It is the contention of the Government that these were accommodation notes made in order to enable the defendants to secure funds of the bank not in the reuglar course of banking business. Now, we are offering the evidence now to show the motive and intent to defraud.

The Court: But he will say he knew nothing about it.

Mr. Dodds: But I wanted to show he not only didn't know about the notes but that he didn't know that the money was going out of the bank of which he was a director, for the benefit of the defendants.

The Court: I suppose he didn't. Ask him whether he knew that these notes had ever been taken by the bank.

Mr. Dodds: Yes.

The Court: Of course, I don't suppose that you have here any report of the discount committee during this time at all.

Mr. Dodds: There was not.

The Court: You cannot show that now. All right, proceed.

Mr. Davidson: We have an exception to the court's ruling on that.

The Court: All right.

Q. I hand you Government's Exhibits—just look at these as I hand them to you—Government's Exhibits No. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, and ask you to look at the signatures of each there and look at the papers as I hand them to you.

Mr. Kramer, I ask you whether you at any time during the year 1923, and up and until the time that the bank finally closed, knew that any of the loans represented by the Government's Exhibits that I have handed you were made by the bank? A. No, I did not.

Mr. Davidson: To which the defendants each make the same objection and for the same reason.

The Court: Let the answer stand.

Mr. Davidson: Note an exception.

Mr. Dodds: Now, I offer in evidence, if you honor please, Government's Exhibits No. 24 to 35 inclusive, being the notes identified by the witness LeBus, and that the witness states he knew nothing of.

The Court: Very well.

Mr. Davidson: To which the defendants each object for the reason that the exhibits, Government's Exhibits No. 24 to 35 inclusive, do not prove or tend to prove any material issue involved under any count of the indictment and for the further reason that the defendants are charged under the indictment with making false entries in a minute book of the bank, and the identify or character of the notes represented by the exhibits here is wholly immaterial to the issues involved in the case.

The Court: But there are some counts based on reports made to the Comptroller of the Currency.

Mr. Davidson: But, if your honor please, those reports set out specifically three certain notes as a basis for

those counts and they are bound by that, and they cannot go out and bring in other notes of the bank.

Mr. Dodds: The Government's position, if you honor please, to these notes is this: The witness this morning testified they were taken into the bank during the period covered by the false entries in the minute book. The minute book shows that this witness approved these notes, and this witness testifies that he was not present at the meeting of the board of directors during the year 1923.

Mr. Dodds: (Continuing) We show now, if your honor please, that they were not approved. We show that, of course, by his testimony. We also have to show in this case the intention to deceive. Now these notes showing —as we connect it up, we got to do that and we will connect it up—these notes showing certain moneys going into the hands of the two defendants here, when it is connected up, and that is the only basis on which we offer it, that the money in all of these instances represented by these notes went to the two defendants in this case, and that this witness, a director, did not know about it, showing their motive for deceiving the Comptroller of the Currency and the Bank Examiners.

Mr. Davidson: Now, if your honor please, these were the things that they were charged with and prosecuted in the other case, misapplication of these very identical notes.

The Court: But of course I can see this: What they are charged with here is falsifying the minute book of the bank, and if they had made reports by the discount committee that would probably have shown what the paper was, but they will have to prove it in some other way, that the purported reports of the discount committee appeared to be approved by the board of directors, they were transacting business without anything of the kind being done.

Mr. Davidson: But they contend that there was no discount committee reports made at all.

The Court: They have not said so.

Mr. Davidson: They allege it in the indictment.

The Court: They have said it was not approved as shown by the minutes.

Mr. Davidson: No, they said the discount committee did not make the report.

The Court: Well, that is probably true.

Mr. Davidson: Well, they say they were not approved.

The Court: No, I think this will be probably one phase of the matter, or may be. Proceed.

Mr. Davidson: Note an exception.

The Court: To show the intent with which these minutes were made. That is all.

Mr. Dodds: Exactly, if your honor please. Government's Exhibit No. 24, a note in the sum of $17,000——

The Court: Those were read—the jury knows what those are now without reading all of them.

Mr. Dodds: Then I will just indicate, if your honor please. Government's Exhibit No. 24 is a note for $17,500.00, signed by Simon W. Knoten. Government's Exhibit 25 is a note in the sum of $22,313, signed by J. W. McDonnell. Government's Exhibit 26, a note in the sum of five thousand dollars, signed by E. Forrest Hayden. Government's Exhibit 27, a note in the sum of ten thousand dollars, signed by William O. Bohnefeld. Government's Exhibit 28, a note in the sum of ten thousand dollars signed by M. A. Houser. Government's Exhibit 29, a note in the sum of twenty thousand dolllars, signed by The Lincoln Company, Incorporated. Exhibit 31, note for thirty-four thousand dollars, signed by A. E. Lewis, with a pencil notation which reads, "Reducing 34 to 11,500." I don't know why that is, but I speak of it because it is there. Government's Exhibit 32, note in the sum of one thousand dollars, signed by A. E. Lewis. Government's Exhibit 33, note in the sum of one thousand dollars, signed by A. E. Lewis. Exhibit No. 34, a note in the sum of $34,000, signed by W. L. Lewis, marked down to eleven thousand five hundred, with pencil. Government's Exhibit 35, a note by Mason Kittiss, in the sum of $15,000.00. Take the witness.

Mr. Davidson: Mr. Marshal, will you get from Mr. Lessley Defendants' Exhibits 2, 3, 4, 5 and 21, on the other case?

Cross Examination by Mr. Davidson.

Q. Mr. Kramer, you were elected a director of the Liberty National Bank in 1917, you say?

A. I think so; about that time.

Q. You were a stockholder in the bank at that time, were you? A. No, sir.

Q You bought stock at that time, then?

A. They turned me stock at the time, and I was not present—called me up over the 'phone and wanted me to act as a

director and said they would take some stock for me, one thousand dollars. I didn't want to accept and they finally persuaded—called me up a second time. I was not present when they elected me a director.

Q. You did accept the stock and paid for it, didn't you?

A. Yes, sir.

Q. And you did accept the directorship and qualified, didn't you? A. Yes, sir, at that time.

Q. Those directors were elected annually at the stockholders' meeting in January, weren't they? A. Yes, sir.

Q. And you were regularly notified by the officials of the bank of the holding of a stockholders' meeting, weren't you, by a written notice? A. No, sir.

Q. Didn't they send out each year a notice to all of the stockholders of the stockholders' meeting? A. No, sir.

Q. You never got any notice of that kind?

A. I never got any notice that I remember of.

Q. Well, after these stockholders meetings, you did sign and execute the director's oath, which was forwarded to the Comptroller of the Currency, didn't you?

A. Yes, sir, I think I did.

Q. Now, you say that you were not present at the stockholders meeting on the 9th day of January, 1923? A. No, sir.

Q. Where were you on that day? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. You don't know whether you were in Tulsa or not?

A. No, sir, I don't—what day did you say—the 9th?

Q. The 9th day of January, 1923.

A. I would rather think I was there at home.

Q. At home? A. Yes, sir.

Q. That was the date of the regular stockholders' meeting, wasn't it? A. I don't know whether it was or not.

Q. The annual stockholder's meeting, the date of which was fixed by your by-laws, wasn't it, Mr. Kramer?

A. Well, sir, I suppose they were.

Q. And I hand you a paper marked for identification Defendants' Exhibit No. 2, and ask you to examine it and state whether or not that is your signature?

A. Yes, sir, that looks like mine.

Mr. Davidson: We offer in evidence, if your honor please, a certified copy of the director's oath.

Mr. Dodds: No objection; and we admit it was his signature.

Mr. Davidson: All right.

Mr. Dodds: It was his signature; no question about it.

Mr. Davidson: It may be admitted in evidence, if your honor please.

(Thereupon, Mr. Davidson reads Defendants' Exhibit No. 2 to the jury.)

Q. Now, you did subscribe that oath as a director on the 9th day of January, 1923, didn't you, Mr. Kramer?

A. I don't know whether it was that day or not. They brought papers out to my house, or when I would drop in the bank on business they would hand me papers to sign and I signed them.

Q. You did sign that paper? A. Yes, sir, I signed that.

Q. You signed the oath of directors annually, the same oath in form, didn't you? A. Yes, sir.

Q. And it was always executed on the day the stockholders met, wasn't it?

A. I never met with the stockholders. I don't know whether it was that day or not.

Q. You don't know whether it was or not? A. No, sir.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 3, and ask you to examine that and state whether that is your signature to that paper? A. Yes, sir.

Mr. Davidson: We offer this exhibit in evidence, if your honor please, which is a certified copy of the directors' oath, made on the 9th day of February, 1922.

The Court: Very well.

Mr. Davidson: Which is the same form as the other one.

Q. I hand you a paper marked for identification Defendant's Exhibit No. 4, and ask you to examine that and state whether that is your signature? A. Yes, sir.

Mr. Davidson: We offer in evidence the certified copy of the director's oath made on the 29th day of January, 1921.

The Court: Let it be admitted.

Q. Now, Mr. Kramer, I will ask you if it is not a fact that each year, following the annual stockholders' meeting, if you did not sign the directors' oath with all the rest of the directors and have it sent on to Washington from the time that you were first elected a director?

A. I signed the—that, I don't know whether the others signed it or not. I signed that. I signed those as they were brought out to me.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 5, and ask you to examine that signature and state whether it is yours? A. Yes, sir.

Mr. Davidson: We offer in evidence Defendant's Exhibit No. 5, which is a certified copy of the directors' oath of 1920.

The Court: All right.

Mr. Davidson: These directors' oaths are all in the same form, if your honor please, and if the jury desires to see them why they can examine them.

Q. Now, Mr. Kramer, I will ask you if there was ever a directors' oath tendered to you for your signature that you refused to sign? A. No, sir.

Q. How frequently were you in the Liberty National Bank during the year 1923?

A. Well, I did all my business there. I went in to deposit, go in to check out—in there frequently.

Q. You carried your checking account there?

A. Yes, sir.

Q. You did all your banking business there? A. Yes, sir.

Q. You were in there as often as an average of once a day? A. Oh, no, sir.

Q. Once every other day?

A. Once a week or twice a week, probably.

Q. Once or twice a week? A. Yes, sir.

Q. When you were in there, did you discuss with Mr. A. E. Lewis and W. L. Lewis the bank's affairs?

A. I would ask them how they were getting along and how the bank was getting along. They would always say "Just fine; never was better."

Q. Did you ever discuss any of the loans with them?

A. No, sir.

Q. Now, you knew that the by-laws of the banking association required the directors to meet once a month, didn't you, Mr. Kramer?

A. Well, I knew that they were to have regular meetings, yes, sir.

Q. Yes.

A. And I also told them that I could not be present, and I told them each year to leave me off after the first year. I did not want to serve, because I could not attend the meetings. They told me it would be all right anyhow, just go along; they didn't want to relieve me.

Q. Did you tell them it would be all right for them to count you present at those directors' meetings? A. No, sir.

Q. Nothing was said about that? A. No, sir.

Q. In those conversations, about you not being able to attend? A. No, sir.

Q. Nothing of the kind? A. No, sir.

Q. You are very positive of that? A. Yes, sir, I am.

Q. Now, did you ever discuss with them, in the bank there, the loans that the bank was making? A. No, sir.

Q. Never did? A. No, sir.

Q. They never asked you about any loans they were making? A. Never did.

Q. You knew that the bank had authorized Mr. A. E. Lewis and W. L. Lewis to make all loans for the bank, didn't you? A. No, sir, I did not.

Q. You didn't know that? A. No, sir.

Q. You knew who was making the loans for the bank, didn't you? A. Well, I supposed that they were.

Q. You knew that they were, didn't you, Mr. Kramer?

A. Well, yes, sir, I knew that they were; I knew that there wasn't anybody else making them.

Q. You knew that they had authority from the board of directors to do that, didn't you?

A. No, sir, I didn't know that they had that authority.

Q. Didn't the Lewises ask you about making a loan to—on some property out south of town, there, and questioned you as to the value of the security?

Mr. Dodds: When?

Q. In 1922 or 1923—that was E. J. Brennan.

A. I don't remember anything about that.

Q. You remember nothing about that at all? A. No, sir.

Q. Did you ever discuss with other directors of the bank as to whether or not they were attending these directors' meetings? A. No, sir.

Q. Did you ever discuss with them the question of the bank's loans? A. No, sir.

Q. Did you ever make any investigation or any inquiry of the directors or the officers of the bank as to the loans that the bank was carrying? A. No, sir.

Q. Did you ever make any investigation as to what the minutes of the directors' meetings were showing? A. No, sir.

Q. Did you ever ask to examine the minutes of the directors' meetings? A. No, sir.

Q. Did you ever ask to examine the books of the bank in any particular? A. No, sir.

Q. Now, Mr. Kramer, were you ever in the bank there when it was being examined by the bank examiner?

A. No, sir.

Q. You never were?

A. Not that I remember of. I don't remember of being in that bank when the bank examiner was examining the bank. I don't know the bank examiner.

Q. Do you know the bank examiner, personally?

A. No, sir.

Q. I will ask you if you did not sign a letter as a director along with the other directors of the bank, to the Comptroller of the Currency every time the bank was examined during 1923, and 1922, when it was on the frequent examination list, which was presented to you and signed by you to the Comptroller of the Currency, with reference to what the board of directors were doing with reference to the bank's affairs? A. Yes, sir, I suppose I signed them.

Mr. Davidson: Are those exhibits here yet?

Mr. Williams: They have been sent for. The reporter has them at the hotel; he didn't bring them over. We have asked him to go and get them.

Q. How were those letters of the directors to the Comptroller of the Currency presented to you?

A. Well, they would come out evenings to my house; send one of the boys out from the bank, or either, sometimes they would present them to me in the bank when I would be down there.

Q. You live right in the City of Tulsa, do you not, Mr. Kramer? A. Yes, sir.

Q. You were there every night—practically every night of the year, were you not? A. Yes, sir.

Q You were easily accessible to the officials of the bank, were you not? A. Well, I don't——

Q. You had a telephone in your house, didn't you?

A Oh, yes, sir.

The Court: We will take a recess for five or ten minutes, under the admonition that I have given the jury.

Q. Mr. Kramer, I will ask you if you didn't frequently as a director of the Liberty National Bank attest reports of the condition of the bank to the Comptroller of the Currency?

A. I suppose I did.

Q. That frequently happened, didn't it, Mr. Kramer?

A. Yes, sir.

Q. In 1922 and 1923, is that true? A. Yes, sir.

Q. Now, you say you were presented with letters already prepared to the Comptroller of the Currency, when you say you were requested to sign as a director. I hand you a paper which I will ask the reporter to mark Defendants' Exhibit No. 6, and ask you to examine it and state whether or not that is your signature. A. Yes, sir, that is my signature.

Q. When you executed these letters to the Comptroller of the Currency it was your custom to execute them in duplicate, was it not, Mr. Kramer?

A. Well, sir, I don't know whether they brought them in duplicate form or not.

Q. This exhibit that I show you, Defendants' Exhibit No. 6 bears your signature here doesn't it? A. Yes, sir.

Mr. Davidson: We offer it in evidence, if your honor please, Defendants' Exhibit No. 6.

Mr. Dodds: No objection.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 6 to the jury.)

The Court: Will you allow me to ask a question. Did you know anything about the truth or falsity of the statements in this letter when you signed it?

A. No, sir.

The Court: Are you a business man?

A. Well, sir, I am a farmer and stockman.

The Court: You have had to transact business, haven't you?

A. Yes, sir.

The Court: Did you have an idea, being director of the bank, that the business of such a person was to direct or what did you think it meant?

A. Well, sir, I took their word for it that it was right.

The Court: Well, you certainly have sense enough if I came to you and said, "Here is a promissory note for $20,000.00, I would like for you to sign and I will pay it," just on a statement like that, you wouldn't sign a $20,000.00 note, would you?

A. I wouldn't now.

The Court: You hadn't learned yet that the business of a director in a national bank was to direct the affairs of the bank?

A. I knew that it was their duty to direct.

The Court: Why on earth did you do it?

A. I didn't want to be a director of the bank.

The Court: Why didn't you stop?

A. I told them I wanted out.

The Court: You knew there wasn't any law to compel you to remain as a director.

A. They told me it would be all right, and these things were just a matter of form.

The Court: You do know that this is the reason, such

directing as this is the reason these banks fail. Have you had any individual liability in regard to the affairs of this bank as a director?

A. No, sir.

The Court: It is a wonder to me you haven't. Proceed.

Mr. Dodds: He misunderstood you honor's last question, I think.

Mr. Davidson: This bank was taken over by another bank, your honor.

Mr. Dodds: If you honor please, I don't believe the witness understood your last question. I am sure he would not have made the answer if he had.

The Court: I asked you, have you had any individual liability being a director of this bank you speak of?

A. Yes, sir.

Q. That liability you speak of was a $30,000.00 note that you made to the bank yourself, wasn't it, Mr. Kramer?

A. Yes, sir.

Q. It wasn't based on any liability of yours as a director, was it? A. No, sir.

Q. You haven't been called on to refund in any amount as a director of the bank have you? A. No, sir.

Q. Now, Mr. Kramer, I hand you a paper marked for identification Defendants' Exhibit No. 7, and ask you to examine the signature to that and state whether or not that is your signature?

The Court: I think the witness admitted he signed these statements.

A. Yes, sir.

Mr. Davidson: We offer in evidence, if your honor please, Defendants' Exhibit No. 7, which is a letter to the Comptroller of the Currency by the directors of the Liberty National Bank.

Mr. Dodds: No objection.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 7 to the jury.)

Q. Now, Mr. Kramer, I hand you a paper marked for identification Defendants' Exhibit No. 8, and ask you to examine the signature to that and state whether or not it bears your signature?

A. Well, I don't know; I am not certain whether that is mine or not; it looks like it.

Mr. Dodds: The Government admits that it is the witness' signature.

Mr. Davidson: We offer it in evidence, if your honor please.

The Court: Can you consider that as read?

Mr. Davidson: Yes, sir, and I just want to call attention to one particular part of it here.

The Court: All right.

Mr. Davidson: That is, one paragraph toward the end of it. We want it all introduced.

The Court: All right.

Mr. Davidson: "We had a directors meeting at which all of the directors were present on July 22nd. However, owing to lack of time, the report of your examination was held over until today's meeting." Signed by W. L. Lewis, E. A. Ross, A. E. Lewis, H. N. Gries and John T. Kramer.

Mr. Williams: What is the date of that?

Mr. Davidson: That is August 2nd, 1922.

Q. I hand you a paper which I will ask the reporter to mark as Defendants' Exhibit No. 9.

Mr. Dodds: I just wish to call attention to the fact that that is August of a year prior to the time that our count is based on the August transactions; not the counts that we speak of in our indictment at all.

Mr. Davidson: I know it is. This is from his testimony that he was not present at any meeting in 1922, or 23.

The Court: All right; proceed.

Q. I will ask you to examine the signature to Defendants' Exhibit No. 9, and state whether or not that is your signature? A. Yes, sir.

Mr. Davidson: We offer in evidence Defendants' Exhibit No. 9.

The Court: Very well. Can you dispense with the reading of that?

Mr. Davidson: Just consider it read, your honor.

Mr. Dodds: The date of that, please.

Mr. Davidson: That is March 11, 1922.

Q. Now, Mr. Kramer, these letters to the Comptroller of the Currency were prepared and dictated by the National Bank Examiner that examined the bank, were they not?

A. I don't know.

Q. You don't know about that? A. No, sir.

Q. You never refused to sign any of these papers which were tendered to you for your signature, did you Mr. Kramer?

A No, sir.

Q. These papers that you signed were not tendered to you by either one of the Lewises personally, were they?

A. Well, they had been at the bank but they never did come to my house with them. They always sent one of the boys with them.

Mr. Davidson: I think that is all for the present, your honor.

Redirect Examination by Mr. Dodds.

Q. Mr. Kramer, you stated in answer to Mr. Davidson's question that you yourself owed the bank or had an obligation at the bank for $30,000.00, is that correct? A. Yes, sir.

Q. Is that the note to which you refer, Mr. Kramer (handing witness Government's Exhibit No. 37)?

A. Yes, sir.

Q. Mr. Kramer, who got the $30,000.00 represented by this note?

Mr. Davidson: To which the defendants each object because it is incompetent in this case as to the fact who got the money on that note. It doesn't cut any figure in this case at all.

The Court: Was this note listed as an asset of the bank in these statements?

Mr. Dodds: I beg your pardon, your honor.

The Court: Was this note listed and represented to the Comptroller of the Currency as an asset of the bank?

Mr. Dodds: If you honor please, it was carried on the books of the bank regularly from the time it was made April 8, 1922, clear down to and past the liquidation of the bank, the entire $30,000.00, and we offer it, if your honor please, particularly in view of the fact that the witness was asked on cross examination whether he was obligated to the bank itself, and we desire to show, if your honor please, that he never received any consideration for the $30,000.00 note he made to the bank, and it was among its assets during all of that period.

Mr. Davidson: That has nothing to do with the question of whether we made false entries in the books of the bank on the transaction of that note.

The Court: It might be if there was anything in writing excusing him from paying it to the bank and might not have been collectible and was represented as assets in the reports to the Comptroller, it would be a different thing.

Mr. Davidson: As a matter of fact there is nothing in writing relieving him from liability in the bank.

The Court: There might be with him.

Mr. Davidson: There is none of these reports to the Comptroller in which these entry charges have been made involved in that note.

The Court: Well, the reports to the Comptroller would show the standing of the bank, would it not, the assets and liabilities?

Mr. Davidson: Yes, sir.

The Court: Now, if a note was not collectible because of any agreement between the bank and the maker of the note on which the maker could rely why that would reduce the assets of the bank.

Mr. Davidson: That might be true, if your honor please, if this indictment was drawn in a different way. But this indictment says, "These total loans and discounts are false in that they contain three certain notes."

Mr. Dodds: It would go to the intent anyway, if your honor please.

The Court: It might possibly. All you care to show is that there was no consideration for this note.

Mr. Dodds: Yes, sir, that he never got any consideration for it.

The Court: All right.

Mr. Davidson: Note an exception.

Q. Mr. Kramer, who did get the money represented by this $30,000.00 note? A. The two Lewises.

Q. Did you ever get anything for it at all? A. No, sir.

Q. Was the note ever presented to you along from time to time for payment of principal or interest on it? A. No, sir.

Q. Do you know who did make the interest payment credited on the back of it? A. No, sir.

Q. You never made them? A. No, sir.

Q. I will ask you whether you knew the note was in existence at the time the bank closed? A. No, sir.

Q. Mr. Kramer, as to those matters, those several exhibits that you signed here, letters to the Comptroller of the Currency, I ask you as to whether or not, as to any of them,

you knew enough about the affairs of the bank to know the contents of the letters or understand them?

A. No, sir, I did not.

Q. And I ask you whether or not you depended upon the good faith of the defendants here as to the truth of the matter stated in those letters?

A. I did; and I asked them each time how they were getting along and how the bank was getting along, how they were doing, and they always assured me it was getting along fine and never was in better condition.

Q. Now, as to those oaths of office, there, were you ever actually sworn? A. No, sir.

Q. As to any of those oaths of office? A. No, sir.

Q. Do you remember whether they were made at the bank or whether they were made out at the house, or where?

A. I don't know where they were made.

Mr. Williams: I would like to ask your honor to instruct the jury for what purpose you permit that note to be introduced.

The Court: Only that the intent with which these things charged were done—with intent to deceive the Comptroller of the Currency or the banking association. Stand down.

Mr. Davidson: Just a moment, if your honor please.

Cross Examination by Mr. Davidson

Q. Mr. Kramer, the proceeds of the thirty thousand dollars represented by that thirty thousand dollar note that you made to the bank was placed to your credit in the Liberty National Bank, wasn't it?

A. I asked them why they was doing that——

Q. Just answer my question; wasn't it put to your credit in the Liberty National Bank?

A. Yes, sir, in a special account.

Q. Yes, sir. And I will ask you if you did not draw your personal check, three of them, payable to W. L. Lewis, one for five thousand dollars, one for ten thousand dollars and one for fifteen thousand dollars, totalling thirty thousand dollars, and sign them and deliver them to W. L. Lewis?

A. They made out those checks all at the same time when they made out the note, and I signed the checks. I asked them why they were running it through the bank as a deposit and they said it was only a matter of form and I told them I did not want it to go through my personal account; I did not want it mixed up with that, and they suggested a special account.

Q. I hand you these exhibits, numbers—I hand you photo-

static copies of three checks, marked Defendants' Exhibits Nos. 10, 11 and 12, and ask you to examine them and state whether or not they bear your signature? A. Yes, sir.

Q. Are those checks the ones that withdrew from the account the thirty thousand dollars which was the proceeds of the thirty thousand dollar note?

Mr. Dodds: We admit that they were.

Mr. Davidson: We offer them in evidence.

Mr. Dodds: Those are the checks; we agree that they may go in evidence.

Mr. Davidson: Defendants' Exhibits Nos. 10, 11 and 12, one check—these checks are all dated April 7th, 1922—one for five thousand dollars, one for ten thousand dollars and one for fifteen thousand dollars, signed John T. Kramer, special, payable to W. L. Lewis.

Q. Now, Mr. Kramer, when you made that note of $30,000.00 at the Liberty National Bank, you understood that you were becoming obligated on that note to the Liberty National Bank for $30,000.00, didn't you?

A. For the time it was given, yes, sir.

Q. Yes, sir, and you were solvent and that note was a gilt-edged note when it was taken, wasn't it?

A. Well, I take it that way; yes, sir.

Q. Yes, sir; you have been solvent ever since, haven't you? A. Well, I suppose so; I hope so.

Q. Now, at the same time you made that note of $30,000.00 to the Liberty National Bank, and when you gave Lloyd Lewis the three checks aggregating the $30,000.00, you took from Lloyd Lewis a note payable to yourself, individually, signed by W. L. Lewis and A. E. Lewis, didn't you?

A. Well, they just said exchange notes.

Mr. Davidson: I would like to have the defendants' exhibits in the other case, if your honor please, all of them.

Mr. Dodds: I may say that if it will save time, that I think there isn't any dispute between us on that matter, that Mr. Kramer did get a note from these two defendants right at the time he gave the other note. We admit that.

Mr. Davidson: Well, we want the note in evidence, and we will save time if we can just get those exhibits all here.

The Court: Well, who ever has them, bring them here.

Mr. Williams: If your honor will excuse me a minute I will go see about those exhibits.

The Court: Very well.

By Mr. Davidson:

Q. Mr. Kramer, you testified on the trial of cause No. 8622, the case of the United States, plaintiff, against A. E. Lewis and W. L. Lewis, at Muskogee, in August of this last year, did you not? A. Yes, sir.

Q I want to ask you if you were not questioned on that trial concerning who it was that brought these letters to the Comptroller of the Currency to you for your signature?

Mr. Williams: The reporter will have those exhibits in a few minutes.

A. When they were brought to me out at the house it was either Mr. Garrett or Mr. Lamprich; one of them would bring them out.

Q. I will ask you if this question was not asked you on that trial, and this answer made by you: "Question: Did you sign any other reports or communications to the Comptroller of the Currency, other than the official reports of the Comptroller?" "Answer: I don't think so." That question and that answer was made by you?

A. Whether I signed any other reports to the Comptroller of the Currency other than official?

Q. Yes. A. I don't think I did.

Q. You don't think you made that answer?

A. I think I did; I did not say I did not, did I?

Q. I was just asking you if that question was not asked you and that answer made by you at that time?

A. I don't remember whether that was asked me or not.

Q. Was this question asked you: "Question: Did you attest any of these reports to the Comptroller of the Currency as a director?" And your answer was: "I don't remember whether I did; I signed them in the ordinary way they brought them to me." A. Yes, that is what I——

Q. Wasn't this question, then, asked you: "Question: Who brought them to you?" And your answer was, "Mr. Lamprich." A. I possibly did.

Q. Well, that was a fact, wasn't it, Mr. Kramer?

A. Yes, sir; he brought them to me. I think Mr. Garrett brought some to me, too; I am not positive about that.

Q. I will ask you if this question was asked you: "Question: Who was Mr. Lamprich?" And your answer was: "He was the cashier." A. Yes, sir.

Q. And this question: "Question: Where would you be when he would bring those reports to you?" And your an-

swer, "I would be at home, residence, or may be down in the bank." A. Yes.

Mr. Dodds: I can't see, if you honor please, where this examination is leading at all. The witness has testified to just what he testified to before.

Mr. Davidson: Well, he has not at all.

The Court: Proceed.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 13, and ask you to examine that and state whether or not that is a note you got from A. E. and W. L. Lewis at the time you executed to W. L. Lewis the three checks in evidence in this case? A. Yes, sir.

Mr. Davidson: We offer in evidence the note, if your honor please.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 13 to the jury.)

Q. Now, Mr. Kramer, I will ask you if all these things I enumerate now didn't take place at one transaction; that you executed your note to the Liberty National Bank for $30,000, and received credit to your special account in the Liberty National Bank for $30,000.00; you then drew three checks, one for $4,000.00, one for $10,000.00 and one for $15,000.00 to W. L. Lewis, and delivered them to him and accepted from him this note of $30,000.00, signed by A. E. Lewis and W. L. Lewis, payable to you? A. Yes, sir.

Mr. Davidson: That is all.

Redirect Examination by Mr. Dodds.

Q. Now, Mr. Kramer, it is necessary and I want you to tell very shortly here how you came to make a note for $30,000.00 to that bank. Tell the jury as shortly as you can.

Mr. Davidson: To which the defendants object because it is incompetent, irrelevant and immaterial in this case.

The Court: Proceed.

Mr. Davidson: Note an exception.

Q. Tell the jury now how you came to make the $30,000.00 note to the Liberty National Bank on the 8th day of April?

A. I went into the bank on that date and was approached by Mr. A. E. Lewis in the lobby in the bank and he told me that the bank was being criticised, they being active officers of the bank, that the bank was being criticised for the excessive loans they were carrying to the amount of $30,000.00, and asked me to make a note for $30,000.00 for ten or twenty days only a short time, they would be able—I would never hear from it

any more, and I executed the note and I never heard any more from it until a few days before the bank closed.

Q. Mr. Kramer, you state that the checks and note, your $30,000.00 note to the bank and the checks that you gave the Lewises aggregating $30,000.00 were all made at the same time? A. Yes, sir.

Q. Did you ever know any reason why the note was dated on April 8th, and the checks were all dated the day before, on April 7th? A. No, sir.

Q. Was that ever explained to you in any way?

A. No, sir.

Q. Was there ever any explanation made to you of why this amount was split up in $5,000.00 and $15,000.00 and $10,000.00 instead of just one check for $30,000.00? A. No, sir.

Q. Was this note you got from the Lewises for $30,000.00, ever paid? A. No, sir.

Q. Ever anything paid to you? A. No, sir.

Mr. Dodds: That is all.

Recross Examination by Mr. Davidson.

Q. Mr. Kramer, you state you never heard of that note until about the time the bank closed? A. No, sir.

Q. Now, as a matter of fact, the bank didn't close did it, it was purchased by the Security National Bank?

A. Yes, sir, it was taken over by the Security National Bank.

Q. And they assumed the payment of all the obligations of the Liberty National Bank, didn't they? A. Yes, sir.

Mr. Davidson: That is all.

The Court: Stand aside.

(Witness excused.)

Mr. Davidson: Before we start the next witness, if your honor please, we desire to move the court to strike all of the testimony of John T. Kramer and the jury instructed not to consider it because it is outside of the issues involved in the counts in the indictment.

The Court: No, I cannot do that.

Mr. Davidson: Give us an exception.

H. N. GREIS,

called as a witness on behalf of the Government, and being first duly sworn, and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Greis, you live in Tulsa? A. Yes, sir.

Q. Lived there for some years? A. Yes, sir.

Q. A business there, in the oil business? A. Yes, sir.

Q. Mr. Greis, you were a director of the Liberty National Bank of Tulsa from early in its history up until it closed, were you not? A. Yes, sir.

Q. And stockholder. You were a director in that bank during the year 1923? A. Yes, sir.

Q. Now, referring to the last ten months the bank was in existence, Mr. Greis, I will ask you whether you attended any meetings of the board of directors? A. Not that I recall.

Mr. Davidson: Just a moment, Mr. Greis. If your honor please, may we have the same objection to this witness' testimony that we offered to Mr. Kramer's testimony?

The Court: To like testimony of Mr. Kramer's testimony?

Mr. Davidson: Yes, sir, and on the same grounds?

The Court: Yes.

A. With the exception of the meeting the time of the merger.

Q. That is at the end of the year 1923? A. Yes, sir.

Q. During the year from January on up to the time the bank was consolidated and sold out to the other bank, there was no directors meeting to your knowledge?

A. Not that I recall.

Q. Now, did you during that last ten months, Mr. Greis, give any personal attention to the loans the bank made?

A. No, sir.

Q. Did you know what loans was made? A. No, sir.

Q. Did you ever act as a member of any discount committee during that last year? A. No, sir.

Q. And did you ever hear any report of a discount committee during that last year? A. No, sir.

Q. Did you ever examine the expense books of the bank during that time? A. No, sir.

Q. Do you remember, Mr. Greis, of there being any annual stockholders meeting on January 9th, the last year the bank was open, 1923? A. I don't recall that.

Q. If there was one you don't know it?

A. No, sir, not to my knowledge.

The Court: Cross examine.

Cross Examination by Mr. Davidson.

Q. Mr. Greis, if there was a meeting you might have been there, might you not?

A. I might have, unless I was out of town.

Q. You don't recall whether you were there or not?

A. No, sir.

Mr. Dodds: You refer to what meeting, Mr. Davidson, for the record.

Mr. Davidson: In January, January 9, 1923.

The Court: The stockholders meeting.

Mr. Davidson: Stockholders meeting, yes, sir.

Q. Now, you transacted all of your banking business at the Liberty National Bank, did you, Mr. Greis? A. Yes, sir.

Q. Were you a stockholder when the bank was first organized? A. I think I was.

Q. And you have been a director, you were a director of the bank since its organization down to the time that it sold out to the Security National Bank? A. Yes, sir.

Q. You are a man of wide business experience here, aren't you, Mr. Greis?

A. Well, I wouldn't say that altogether. I have been in business a number of years.

Q. And you are an oil man, are you? A. Yes, sir.

Q. During the period that the Government has asked you about in 1923, you were a man of considerable wealth, weren't you? A. I wouldn't say that exactly.

Q. Well, you were worth a half million dollars, weren't you, Mr. Greis? A. I was solvent.

Q. You were worth in excess of a half million dollars, weren't you, Mr. Greis? A. I never checked up to see.

Q. You were a borrower of the bank, weren't you?

A. Not very often.

Q. You did attend directors meetings, didn't you?

A. Not in the late years with the exception of one.

Q. When was that? A. The time of the merger.

Q. The time of the merger. Well, now, when you were in the bank, you did have conversations and discuss with Mr. A. E. Lewis and W. L. Lewis the bank's affairs, didn't you?

A. In the early part of the organization of the bank.

Q. Well, didn't you in 1923? A. No, sir.

Q. You never made any inquiry of them about what the bank was doing? A. No, sir, only my personal business.

Q. You were a borrower of the bank, weren't you?

A. Yes, sir, at times.

Q. You did a large volume of business there, did you?

A. Yes, sir.

Q. And went to them to borrow money as you needed it?
A. As a rule I did, yes, sir.

Q. Did you ever make any request to see the minute books of the directors meetings? A. No, sir.

Q. Did you ever make any request to see the minute books of the stockholders meeting? A. No, sir.

Q. Did you ever make any request of them to see what loans and discounts the bank was carrying? A. No, sir.

Q. Did you ever discuss with them any loans held by the bank as to whether or not they were good loans or were not?
A. No, sir.

Q. You did sign letters to the Comptroller of the Currency as a director, didn't you? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Q. Every time there was an examination of the bank?
A. Yes, sir.

Q. You had been there frequently, Mr. Greis, in the bank in 1922 and 1923, when the bank was under examination by a National Bank Examiner?
A. On several occasions, yes, sir.

Q. And you have been called down there and discussed the loans and discounts with the bank examiner?
A. Well, after the inspection was over there was some sort of a report presented to what it contained I really don't know.

Q. Well, you signed the report presented to you, didn't you? A. Yes, sir.

Q. And that was a report prepared by the bank examiner, wasn't it?
A. Well, I don't know who prepared it, but it was to the Comptroller.

Q. You discussed with the bank examiner these reports, didn't you? A. No, sir.

Q. You didn't at no time? A. No, sir.

Q. You knew the bank examiner was there examining the bank did you? A. Yes, sir, at times I did.

Q. And you knew you were signing these reports to the Comptroller of the Currency because the bank examiners requested you?
A. I don't know whether they requested it or not. I know they were reports to the Comptroller.

Q. I will ask you to examine Defendant's Exhibits 7, 8 and 9, and state whether or not they bear your genuine signature.

Mr. Dodds: I think we can save time I think we admit in each case that Mr. Greis' signature in each instance there, where his name appears.

Mr. Davidson: And you will also make the same ad-

mission with reference to these oaths of the board of directors?

Mr. Dodds: Wherever his name appears it is his genuine signature.

Mr. Davidson: All right, on Defendants' Exhibits 3, 4 and 5.

Q. Now, Mr. Greis, you knew that A. E. Lewis and W. L. Lewis made all the loans for the bank, didn't you?

A. Yes, sir.

Q. You knew that they were authorized by the board of directors to do that, didn't you?

A. Well, I never give it a thought.

Q. You never gave it a thought?

A. I presume—they were the large stockholders at the bank.

Q. Now you were present at the meeting of the board of directors in 1922? A. 1922?

Q. I believe you said you were not present at the meeting of the board of directors during the last ten months before the bank was sold out to the Security?

A. With the exception of the night of the merger.

Q. But prior to that ten months you were attending the meetings of the board of directors?

A. Not that I recall, no, sir.

Q. Did you ever attend a meeting of the board of directors?

A. Yes, sir, when the bank was first organized we had some meetings.

Q. Did you ever when you were in the bank ask to see the expenses of the bank? A. No, sir.

Q. Did you ever inquire as to who the discount committee was? A. No, sir.

Q. Or as to whether or not they were making any reports? A. No, sir.

Q. You never made any inquiries as to the condition of the bank at all, then? A. No, sir.

Q. You frequently signed these reports to the Comptroller of the Currency, setting out what the condition of the bank was? A. Yes, sir.

Q. In which you took an oath you had examined the condition of the bank?

Mr. Dodds: I object, there is no such oath as that. The witness coudn't sign such a thing and if he had——

Q. You frequently attested these reports to the Comptroller of the Currensy as a director, did you?

A. Yes, sir.

Q. And these reports were statements as to the condition of the bank?

A. Yes, sir, but I never read them.

Q. Now, Mr. Greis, at these meetings of the board of directors that you did attend, were they formal or informal meetings?

A. Well, I don't know; we were not called——

Q Were parliamentary rules followed, and some member make a motion, and some member second it, and put it to a vote, and be carried, or would it be just common tacit consent, and what was done in the meeting then written up from what took place?

A. Well. I don't recall that; it was so long—we had a meeting that——

Q. There was one in November, 1923, when the bank was sold to the Security, wasn't there? A. Yes, sir.

Q. That was an informal meeting, wasn't it?

A. Yes, it was. I was called on the telephone to come down to attend a meeting.

Q. Yes, and the minutes were written up several days afterwards, weren't they? and signed by you?

A. I think they were written up that night.

The Court: Stand down.

Mr. Davidson: That's all—wait just a moment, if your honor please.

The Court: Stand down.

Mr. Dodds: Just one question, if your honor please.

Redirect Examination by Mr. Dodds.

Q. In regard to these reports to the Comptroller, Mr. Greis, those were reports such as are taken off from the books of the bank, were they not?

A. Yes, sir, I presume they were.

Q. Where you signed your name as attesting the report?

A. Report of the bank was what I thought they were. It was customary to send in same as an income tax report.

Q. The Cashier swears to them, and the directors attest the Cashier's signature, and so on? A. Yes, sir.

Q. On the report. Would it have been possible for you to have known the truth or falsity, Mr. Greis, of the contents of that report without depending on other people's words?

Mr. Davidson: To which we object because it is incompetent, irrelevant and immaterial; he can't tell whether it was or not.

The Court: Well, I suspect the object is for a man

to know what he is certifying to, or attesting—no business signing this letter without knowing what was in it.

Mr. Dodds: We are speaking now of the reports to the Comptroller of the Currency.

The Court: A director ought to know enough about that to know about it—a director that was directing.

Mr. Dodds: I submit that was perfectly the case, if your honor please, but that was not quite my intent in asking the question.

Q. It was whether or not, Mr. Greis, you could have determined the correctness of the entries in the report in any other way than going and examining the books of the bank yourself? A. No, sir.

Q. And if the books of the bank were not right, you could not have told whether the report was right.

A. I relied on the cashier, whoever made up the report, that it was correct.

Q. And the other clerks in the bank? A. Yes, sir.

Mr. Dodds: That's all.

The Court: Stand down.

E. A. ROSS

was called as a witness on behalf of the Government, and after being first duly sworn, he testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ross, you are a resident of Tulsa, are you not?

A. Yes, sir.

Q. And lived there for a good many years?

A. Yes, sir.

Q. You were a director—you were a director of the Liberty National Bank during the last few years of its existence, weren't you? Including the year 1923, up to the time the bank dissolved? A. Yes, sir.

Q. Now, Mr. Rosse, Mr. Greis, who was just on the stand, Mr. Kramer, who preceded him, and the two defendants here, and yourself, were all the directors of this bank, isn't that right? A. I——

Q. During the year 1923?

A. Yes, sir; I don't recall just when Dr. McGinness resigned. He was a director of the bank.

Q. Yes, but during the last ten months?

A. Yes, sir; I think that was all.

Q. Mr. Ross, I show you Government's Exhibit No. 36,

being page 17 of the—of the Minute Book No. 2, of the bank, and the minutes of a purported meeting on the 9th day of January, 1923, of the stockholders; and Mr. Ross, I call your attention to your signature—your name in two places as secretary of the meeting, one attesting the correctness of the minutes, and the other, as secretary. Is that your signature?

A. Yes, sir.

Mr. Davidson: Now, if your honor please, we want to make the same objection to this witness' testifying to the minute book as we made to the other director.

The Court: Very well.

Mr. Davidson: And have the same exception.

The Court: Same ruling. Proceed.

Q. Now, I turn to page 19, and ask you whether the name E. A. Ross appearing thereto is your signature?

A. Yes, sir.

Q. I turn to page 21, and ask you whether the name, E. A. Ross there, is your signature? A. Yes, sir.

Q. To page 23, and ask you whether your name appearing there as secretary of the meetings, of March 20, 1923, is your signature? A. No, sir.

Q. Do you know who wrote your name there?

A. No, sir.

Q. As secretary? A. No, sir.

Q. Who— do you know whose writing it is?

A. No, sir.

Q. But you know it is not your writing?

A. I know it is not mine.

Q. I turn to the minutes on page 25 of the minute book, of April 24, and call your attention to the signature of E. A. Ross, secretary, and ask you whether that is your name written by you? A. No, sir.

Q. Do you know who wrote it? A. No, sir.

Q. I call your attention to your signature on page 27, of the minutes of a purported meeting of May 22, 1923; is that your signatue? A. No, sir.

Q. Do you know who wrote that? A. No, sir.

Q. Whose writing that is. Turn to page 29 of the Minute Book No. 2, to the minutes of a purported meeting of Tuesday, June 19, 1923, where your name is signed in ink, as in these other pages, E. A. Ross; is that your signature?

A. No, sir.

Q. Do you know who signed that, Mr. Ross?

A. No, sir.

Q. I turn to page 33, being the minutes of a purported

ing of August 11th, 1923, and call your attention to your name E. A. Ross signed there; is that your signature?

A. Yes, sir.

Q. You actually signed that? A. Yes, sir.

Q. I turn now to page 39, minutes of the purported meetings of August 11th, 1923, and call your attention to your name in ink? Is that your shignature? A. No, sir.

Q. Do you know who signed that? A. No, sir.

Q. Page 41, the minutes of purported meetings held August 23, your name does not appear on that page at all?

A. No, sir.

Q. Minutes of purported meetings of September 24, 1923, on page 32 of the Minute Book, your signature appearing at the close of the writing up of the minutes on page 44, E. A. Ross; is that your signature?

A. Yes, sir; I think so. Yes, sir.

Q. That is your signature. Now, Mr. Ross, as to any of those signatures—all of those signatures that you have said are not yours, I ask you whether you at any time authorized anyone to sign your name to the minutes of the meetings as being your signatures, as secretary to such meetings?

A. Not that I ever recall.

Q. Mr. Ross, did you ever attend a meeting of the Board of Directors of the Liberty National Bank of Tulsa subsequent to the beginning of the year 1923—that is, the last ten months the bank was in existence?

A. No, sir; not a meeting.

Q. Not a meeting. I am not speaking about the final meeting now when the banks merged; I mean the meetings between January 1st, and the merger of the bank the following November; was there any meeting held to your knowledge of the Board of Directors during that ten months period?

A. No, sir.

Q. Did you, Mr. Ross, ever have occasion during that ten months period to examine a report of a discount committee as to the loans made during that period? A. No, sir.

Q Was there any discount committee to your knowledge during that ten months?

A. Not to my knowledge.

Q. Did you ever examine, Mr. Ross, an expense book of the Bank at a meeting or at any time during that last ten months? A. No, sir.

Q. Or approve an expense book of the Bank during that time?

A. Not that I know of—that is, I may have signed some paper that I didn't read.

Q. I am not asking you as to signing now, Mr. Ross; I am asking you whether you actually examined——

A. No, sir.

Q. An expense book at any time? A. No, sir.

Q. And approved the expenses of the bank?

A. No, sir.

Q. Went over them and approved them. Now, did you know—I hand you, Mr. Ross, Government's Exhibit 24, just look at that quickly as I hand them to you, so you will be able to testify as to them all afterwards. A. Yes, sir.

Q. 24, Simon Knoten note; 25, note of J. W. McDonnell; 26, note of E. Forest Hayden, $5,000; 27, note of William O. Bohnefield, for $10,000; 28, note of M. A. Houser, for $10,000; 29, note of The Lincoln Company, for $20,000; 30, note of The Mingo Company, for $33,000; No. 31, note of A. E. Lewis for $34,000; No. 32, note of A. E. Lewis for $1,000; No. 33, the note of W. L. Lewis for $1,000; No. 34, the note of W. L. Lewis for $34,000; No. 35, the note of Mason Kittiss for $15,000. Now I call your attention to the fact that all of these notes are notes made subsequent to January 1st, 1923, and ask you whether or not you knew of any of those loans at the time they were made or ratified them after they were made?

A. No, sir, the only time I saw those notes was—or at least a part of them, was when the bank examination—when the examiner was there.

Q. When was that, Mr. Ross?

A. I could not recall just when that was; that was, I think, the last examination that the bank had.

Q. Well, was that just before the merger?

A. Well, some little time, I presume; it may have been four or five months before—I don't recall the date.

Q. Yes, and at the time that examination was made, you did then know of some of these notes being in the bank.

A. Yes, sir.

Q. Did you go over them with the examiner?

A. Yes, sir, the examiner called my attention to some of them; I don't recall whether they were all there.

Q. Did the defendants ever call your attention to them or explain them to you or tell you what they were about?

A. No, sir.

Q. Did you ever know that they were so-called accommodation notes? A. No, sir.

Q. Did you ever know that the proceeds of those notes went to the defendants and not to the individuals who made them? A. No, sir, I did not.

Q. When did you first know that?

A. After the merger.

Q. After the merger.

Mr. Davidson: Now, if your honor please, we object

to that and move that that answer be stricken, because it is wholly immaterial.

The Court: Well, strike it out. Proceed.

Mr. Davidson: Exception.

The Court: I struck it out.

Mr. Davidson: Oh, I beg your pardon.

Q. Mr. Ross in—on page 41 of the minute book, being the purported—a purported meeting of August 23, 1923, which reads as follows. "The directors of the Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma. at 3:00 o'clock P. M., Thursday, August 23, 1923, with the following directors present: A. E. Lewis, John T. Kramer, W. L. Lewis. A. E. Lewis was chosen chairman and W. L. Lewis secretary. A motion was made by John T. Kramer and seconded by A. E. Lewis that E. A. Ross be re-elected as director as through an oversight on his part and on the part of the other directors he was automatically disqualified as a director on account of having pledged the full amount of his stock as collateral to a loan. There being no further business before the meeting, the board adjourned."

Now Mr. Ross. I wish to ask you whether you knew anything about your being elected as a director of that bank on August 23, 1923? A. No, sir.

Q. I will ask you whether you knew, on August 23, 1923, that you were not a director? A. No, sir.

Q. When was the matter of your having been disqualified and ceased your relation as a director first called to your attention?

A. We were called to the examiner—Chief Examiner's office at Kansas City I don't recall the date, and Mr. Roberts objected or made the statement that there were no directors there, that I really was not a director; that I did not have any stock—my stock was pledged.

Q. About when was that?

A. I could not give the date of that meeting, Mr.——

Q. Well, was it prior to August or after?

A. It was just—it was just a few months before the merger of the two banks, just a few months.

Q. Would you say within the last two or three months?

A. Well, I can't say: within a month or two of that; that would be early.

Q. Was it early as August; do you know that, Mr. Ross, that you went up there to Kansas City?

A. No, I don't think it was.

Q. You think it was after that time?

A. I think it was after August.

Q. Now, when you were up there, was the first you heard of your having been disqualified as a director?

A. Yes, sir.

Q. Were you then told that you had been re-elected?

A. Yes, sir.

Q. Who told you that?

A. Well, Mr. Lewis told me, or told Mr. Roberts that stock had been placed to my credit.

Q. How did it come, Mr. Ross that—you knew that parting with your stock ended your term of office as a director, did you not; or did you know that?

A. No, I didn't really know that pledged stock——

Q. I see. A. I didn't know that.

Q. Had you pledged that stock for some personal matter of your own?

A. It was loaned; I had it at St. Louis.

Q. What is that?

A. The stock was pledged on a loan that I had at St Louis.

Q. At St. Louis.

Mr. Dodds: That is all.

The Court: Any cross examination?

Cross Examination by Mr. Davidson.

Q. Mr. Ross, I will ask you if you did not take an oath as a director of the Liberty National Bank, annually when the directors were elected at the annual stockholders' meeting?

A. Well, we did not have any annual stockholders' meeting.

Q. Never did?

A. Oh, we had—in the early—in the early organization of the bank.

Q. Well, did you execute your annual oath of a director with the other directors, which was filed and sent to Washington to the Comptroller of the Currency?

A. I presume so.

Q. I will ask you to examine Defendants' Exhibits Nos. 2, 3, 4 and 5 and state whether or not they bear your signature as a director?

Mr. Dodds: We admit that they do bear his signature, to save time.

The Court: Very well.

A. That one is.

Mr. Dodds: Put them in.

The Court: He admits it, so——

Mr. Davidson: All right.

Q. Now, then, did you sign an oath as a director in August, 1923, when you were re-elected as a director after you had pledged your stock?

A. I could not say; if they asked me—if they asked me to sign the paper. I probably did.

Q. Well you don't remember?

A. Well, I don't recall it; no, sir.

Q. You might have done it?

A. I might have done it, yes, sir.

Q. Now, Mr. Ross, you did your banking business there at the Liberty National Bank, didn't you?

A. Most of it.

Q. You had been connected with that bank ever since its organization, hadn't you? A. Yes, sir.

Q. Been a director in it ever since it was organized?

A. Yes, sir.

Q. You were a heavy borrower at that bank from time to time weren't you? A. Yes, sir.

Q. You were engaged in the oil business?

A. Yes, sir.

Q. Did a large volume of business, didn't you?

A. Well, considerable.

Q. How frequently were you in the banking institution there, during 1923, up to the time the bank was sold to the Security National Bank?

A. Well, during 1924 I don't think I was there—previous to that, when I had my office in the same building, I was in about every day, but in 1923 I wasn't there so often.

Q. About how often?

A. Oh, once or twice a week.

Q. And when you were in there, did you discuss with the defendants in this case A. E. Lewis and W. L. Lewis the affairs of the bank from time to time? A. Very little.

Q. Very little? A. Very little.

Q. You knew when the bank was under examination by the National Bank Examiner didn't you? A. Yes, sir.

Q. You knew the bank was on the frequent examination list, didn't you? A. Yes, sir.

Q. And you knew that for about eighteen months before this bank was sold to the Security National Bank, didn't you?

A. I don't recall how long it was.

Q And all the directors knew it was on the frequent examination list? A. I don't know that.

Q. Didn't you discuss it with them? A. No, sir.

Q. You were frequently called in the bank there when the National Bank Examiner was there making an examination, weren't you?

A. I think most of the examinations I was called in. When I was there I think I was called in.

Q. And when you were called in there, you discussed these loans and these notes with the National Bank Examiner, did you? A. Yes, sir.

Q. You went over the note case with him, didn't you?

A. Yes, sir.

Q. You were advised about what loans and discounts the bank was carrying, weren't you?

A. I knew what was there.

Q. You were a member of the discount committee, weren't you? A. There wasn't any that I know of.

Q. Didn't you know that the by-laws called for a discount committee?

A. No, sir. But I had a general idea that they did.

Q. Don't you know that the Bank Examiner requested that the discount committee have on it one member other than an officer of the bank and that you were put on that discount committee for that reason?

A. I don't recall anything about a discount committee.

Q. Don't you recall the National Bank Examiner insisted that somebody outside the bank as an official be on the discount committee? A. No, sir.

Q. At the times when you were in there, you discussed the affairs of the bank back in the office of A. E. Lewis, private office of A. E. and W. L. Lewis, didn't you?

A. We probably discussed some of the affairs of the bank.

Q. When you were in there, you generally went back to that private office, didn't you?

A. It was personal matters we mostly talked about.

Q. Now, Mr. Ross, did you say that you were not present at that stockholders meeting in January, 1923?

A. I don't know of any being held, a stockholders meeting we had. I probably was in there with the two Mr. Lewises, but I don't recall of anyone else being there.

Q. That is your signature as secretary to the minutes of the stockholders meeting, isn't it? A. Absolutely.

Q. Why did you sign that as secretary, if there wasn't any meeting held?

A. They put it before me to sign and I signed it.

Q. You signed it? A. Yes, sir.

Q. And these minutes of the meetings of the board of directors which you have admitted bear your signature as secretary, you say that you were not at those meetings and no meetings held? A. Yes, sir.

Q. Why did you sign the minutes of the meetings if they were not held?

A. I did it at Mr. Lewis' request.

Q. Which one? A. A. E.

Q. Did they request you to do it? A. Yes, sir.

Q. Did they present you the minutes?

A. Well, either them or one of the boys.

Q. Well, now, there is a big difference between that, Mr. Ross. You are testifying now.

A. Well, I remember one occasion they asked me to sign and I hesitated to sign, and I told Mr. Lewis at that time if this matter ever should come up and the meeting wasn't held they were asking me to sign minutes of meetings that were not held, I had perfect confidence in him, if it ever was brought up I would testify to the truth about it.

Q. Now when was that?

A. I couldn't testify as to the date. It was possibly six or eight or ten months previous to the merger of the two banks.

Q. What officer of the bank was it that wrote up these minutes? A. I couldn't say.

Q. Mr. Lamprich? A I couldn't say.

Q. Mr. Lamprich ever present these minutes to you for your signature?

A. Either Mr. Lamprich or Mr. LeBus, I don't recall which one; I think probably Mr. Lamprich.

Q. Didn't you tell Mr. Lamprich for him to sign your name to these minutes and it would be all right, and not to bring them to you?

A. Not to my recollection. If Mr. Lamprich says I did, I probably did; I don't recall it.

Q. Do you say that you didn't do it?

A. I say I didn't to my best recollection, to my best knowledge I didn't; that is my best recollection of it.

Q. You have since learned, have you not, Mr. Ross, that Mr. Lamprich did sign your name to some of these minutes that you say you didn't sign?

A. I think I heard that at Muskogee, one of the boys, I wouldn't say it was Mr. Lamprich.

Q. Now, Mr. Ross, after these examinations by the Bank Examiner and after you had discussed with him and gone over the note case and discussed with him the notes and assets of the bank, the Bank Examiner prepared a letter, dictated a letter to the Comptroller of the Currency which he asked the directors to sign, didn't he? A. Yes, sir.

Q. These letters that were dictated by the National Bank Examiner after he had made an examination and were presented to the directors to sign, were then forwarded to the Comptroller of the Currency by the bank, weren't they?

A. I presume so.

Q. Now, these exhibits, which are defendants' exhibits

Nos. 6, 7, 8 and 9 which I will ask you to examine and state whether or not those signatures are yours.

Mr. Dodds: If his name in on those exhibits it is his signature.

A. That is mine; that is mine; that is mine; all mine.

Mr. Williams: Show in the record, Mr. Davidson, what exhibits those are.

Mr. Davidson: Those are defendants' exhibits 6, 7, 8 and 9.

Q. Now, Mr. Ross, these letters which are defendants' exhibits 6, 7, 8 and 9 which purport to be letters from directors of the Liberty National Bank to the Comptroller of the Currency were as a matter of fact dictated by the National Bank Examiner himself after he had made an examination, weren't they?

A. I think so. I am not postive about that, but I think so.

Q. Wouldn't he ask that they take these letters and go get the directors to sign them?

A. I don't know what was asked as to the others. The letters were brought to me to sign and I signed them.

Q. And that was done after you had gone through the note case with this National Bank Examiner, wasn't it?

A. Yes, sir.

Q. And after you had discussed the assets of the bank with him thoroughly and the National Bank Examiner knew that they were not any formal directors meeting, didn't he?

A. Not to my knowledge, I don't know that he did. He never asked me about it.

Q. When he dictated those letters saying that the directors had met, he knew that they hadn't, didn't he, at that examination? A. I don't know that he did.

Q. At the time that you were called over and went through the note case with the National Bank Examiner when he was examining the bank, you didn't have any formal meetings of the directors, did you? A. No, sir.

Q. And these papers here, exhibits 6, 7, 8 and 9, and other letters from the directors to the Comptroller of the Currency were prepared as a result of these examinations by the National Bank Examiner, weren't they?

A. That I can't answer; I don't know. The letters were brought to me.

Q. Who was the National Bank Examiner that made the examination in 1922 and 1923?

A. Well, Mr. Griffey. I recall him. I don't know whether there was any other one than Mr. Griffey or not.

Q. I think I have asked this question, but I want to be

certain about it, if your honor please. Now, Mr. Ross, you know that some of these letters to the Comptroller of the Currency, which you have signed, were dictated by the National Bank Examiner after he had made an examination with you of the assets of the bank, and after he had asked the directors to sign them, didn't you?

A. I understood he dictated them. He didn't tell me he did. Mr. Lewis presented them to me with that understanding.

Q. Now, these letters were brought to you and signed by you when there was nobody else present, weren't they?

A. Yes, sir.

Q. There was no meeting of the board when they were signed? A. No, sir.

Q. Did the National Bank Examiner exact that all the directors sign these letters?

A. Well, not in my presence, not that I recall, at the examination.

Q. Did the National Bank Examiner ever discuss that with you?

A. I didn't know that there was going to be any letter at the time, so far as I was concerned.

Q. Didn't you know a letter was written after every examination by the National Bank Examiner?

A. I probably do know it now, but I couldn't say I knew it then I knew there was something to sign; I paid no attention to that part of it.

Q. That always followed an examination, didn't it?

A. Yes, sir.

Q. Now, the Mr. Griffey, that you speak of, who made the examination and dictated these letters is the very Mr. Griffey who was a witness in this case, wasn't he?

Mr. Dodds: Just a minute. The witness has not said at all the words put in his mouth here, that Mr. Griffey dictated it; he has emphatically stated he didn't know who dictated it.

Mr. Davidson: He said Mr. Griffey was the examiner and the examiner dictated these letters.

The Court: Was that the same Mr. Griffey here this morning that examined the bank?

Mr. Dodds: Sure, he is the same Mr. Griffey that was here this morning, your honor.

Q. Now, this same Mr. Griffey who is a witness in this case dictated some of these letters, didn't he?

A. I couldn't say that he did; I don't know that he did. He didn't dictate them in my presence.

Q. He is the only examiner that you remember of examining the bank during 1922 and 1923, isn't he?

A. The only recollection that I am positive of is one examination by Mr. Griffey; I am positive of that; the others are hazy in my mind.

Q. And that was in August, 1923?

A. I couldn't say the date.

Q. Do you remember an examiner by the name of Burdman? A. Yes, sir, I remember such a man.

Q. I ask you if he wasn't the examiner immediately preceding Mr. Griffey? A. I couldn't say.

Q. At this examination you recall when Mr. Griffey was there, that was the date of the examination having taken place some three or four months before the Security National Bank bought the Liberty out, wasn't it? A. Yes, sir.

Q. And that was the last examination made of the Liberty National Bank? A. Yes, sir.

Mr. Davidson: I think that is all, if your honor please.

(Witness excused.)

The Court: I think we will suspend here until morning. Gentlemen of the jury, we are about to take an adjournment of the court until 10:00 o'clock tomorrow morning. Remember the usual admonition, and you will be under the care of the officers. You may pass out and return at 10:00 o'clock in the morning.

(Whereupon, court took a recess until 10:00 o'clock, Saturday morning, January 23, 1926.)

10:00 o'clock A. M., January 23, 1926, all parties and the jury being present, court met pursuant to adjournment, and the following proceedings were had:

The Court: Proceed with the trial. Examine the witness.

C. A. SANDERSON

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Sanderson, you live at Tulsa, do you not?

A. I do.

Q. What is your business over there?

A. Well, investments, principally; some building—some contracting and building and some oil business.

Q. You have been in business there for some years?

A. Twenty years.

Q. Twenty years. Mr. Sanderson, were you a director of the Liberty National Bank at any time during the last few years of its existence, the last two or three years?

A. Oh, the last year of its existence, I was not; up until the last year——

Q. Prior to the last year? A. Yes.

Q. Were you a director of the bank? A. I was.

Q. And how long had you been such a director, Mr. Sanderson?

A. Well, it is about from 1911 until '22, I believe.

Q. I ask you, Mr. Sanderson, when you were a director, whether you had occasion to take up with the two defendants here, Allie E. and William Lloyd Lewis, the matter of the bank holding or not holding meetings of its board of directors?

Mr. Davidson: To which the defendants each object for the reason, if your honor please, that the time is long prior to the time on which the various counts of this indictment are laid.

The Court: When was this?

Mr. Dodds: This if your honor please, was in 1922, and I call the court's attention to the fact that that is a period, among other periods, covered by the defendants' cross examination here yesterday of other directors in the bank concerning the signing of these various letters and exhibits that the defendants have introduced.

The Court: Well, it would have something to do with the intent, anyhow; he may answer.

Mr. Davidson: Note an exception.

Mr. Dodds: Please read the question.

(The question is read by the reporter.)

A. I did, with Lloyd Lewis.

Q. What was the occasion, Mr. Sanderson, of your taking that up with Lloyd Lewis?

A. Well, it was a matter of signing some report to the Comptroller of the Currency.

Mr. Davidson: If your honor please, may we have the same objections——

The Court: Yes.

Mr. Davidson: —to all of this line of examination and the same exception.

The Court: Yes.

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By Mr. Dodds:

Q. Mr. Sanderson, at that time, say during the year 1922, were directors' meetings—your last year, were directors' meetings of the bank being held?

A. No, they were not

Q. Do you remember when that last directors' meeting that you attended was held?

A. Well, I think it was along about '17—I don't remember of signing—'18, along there. It might have been as late as 1918, possibly the fore part of 1919.

Q. As a result of your conversation with the defendants, concerning not holding directors meetings, did you take any action yourself? A. A little later I did yes.

Q. What action did you take?

A. Well, I asked them to be taken off of the board of directors.

Q. And were you taken off of the board?

A. Well, not until I sold my stock and got off in that way.

Q. Yes. You sold your stock to someone else? A. Yes.

Q. To whom did you sell it, Mr. Sanderson?

A. Flannigan—James Flannigan.

Q. From then on did you have anything to do with the affairs of the bank? A. None whatever.

Mr. Dodds: That is all.

Mr. Davidson: If your honor please, the defendant moves to strike all of this witness' testimony for the reason that it relates to a time long prior to the transactions charged on in the indictment, and because it does not prove or tend to prove any material fact in any count of the indictment.

The Court: It is only admissible, of course, for the purpose of showing the intent and the knowledge. Let it stand for that purpose.

Mr. Davidson: Note an exception.

The Court: All right.

Cross Examination by Mr. Davidson.

Q. Mr. Sanderson, when was it that you sold your stock?

A. I think it was along about the early part—'22.

Q. In the early part of '22?

A. I think it was in the early part; I would have to look the records over to be sure.

Q. You had been a director of the bank since 1911?

A. Yes.

Q. You were one of the original incorporators? A. I was.

Q. You were one of the incorporators of the bank as a state bank? A. Yes.

Q. And then it was nationalized later on? A. Yes.

Q. In 1912, was it nationalized?

A. Yes, about 1912, I think.

Q. You say that there had been no formal directors' meetings held since 1917 or 1918?

A. Yes, not to my knowledge, or my memory, rather.

Q. You were a depositor in that bank, were you not?

A. Yes.

Q. During all of that time? A. Yes.

Q. Carried your checking account there? A. Yes.

Q. Frequently in the bank, were you not? A. I was

Q. Did you, or not, discuss from time to time with A. E. Lewis and W. L. Lewis the condition of the bank? A. No.

Q. You did not? A. No.

Q. You knew that minutes of directors' meetings were being entered in the minute books, from time to time, didn't you? A. No.

Q. Did you ever examine the minute book? A. No.

Q. Did you ever go over the assets of the bank with the National Bank Examiner when he was there?

A. Yes, when the national bank examiner—I was called in several times to a meeting of the bank examiner.

Q. At these times, you did go over the note case? A. No.

Q. You did not?

A. No, only one or two occasions I remember going over the note case.

Q. One or two occasions? A. Yes.

Q. You discussed with the national bank examiner what the bank was doing, did you not?

A. Well, the discussion was principally between Mr. A. E. Lewis and Lloyd Lewis and the bank examiner, and myself and Mr. Ross were usually the only ones there. I don't remember of anyone else being there at any time.

Q. Well, now, Mr. Sanderson, after these examinations of the bank by the National Bank Examiner, the National Bank Examiner dictated a letter which he asked all the directors to sign to the Comptroller of the Currency, didn't he?

A. On one or two occasions, yes.

Q. On one or two occasions. Those were the occasions when you were called in, that you remember now? A. Yes.

Q. To discuss the matters with the National Bank Examiner? A. Yes.

Q. And the National Bank Examiner knew there were not any meetings of the directors being held, didn't he?

A. I don't know.

Q. You don't know?

A. No. I don't remember of his asking us any such question.

Q. Well, the National Bank Examiner knew at the time you and Ross and Greis met with him there was no formal meeting of the directors at that time, didn't he?

A. Well, I never considered that a meeting of directors. I don't know whether the records show it to be such or not.

Q. And when these letters to the Comptroller of the Currency were presented to you, you signed them, didn't you, as a director? A. No.

Q. You didn't?

A. No. I think I did on the first one along about 1918. There was an old gentleman, quite an old, small gentleman, who was bank examiner at that time, and he dictated a letter right before us, and he asked the directors to sign it, and I signed it.

Q. Mr. Sanderson, I will ask you if you didn't from time to time sign reports to the Comptroller of the Currency as to the condition of the Liberty National Bank? A. I did.

Q. You did that frequently?

A. Frequently, until I began to get suspicious, then I refused to sign any more.

Q. You signed them, however, up until the time you sold your stock?

A. I quit quite a while before I sold the stock. That is when I had the conversation with Lloyd Lewis; told him I didn't want to sign any more reports until directors' meetings were held, and I knew what was going on.

Q. How long was that before you sold your stock?

A. I don't know. I would guess about six months; that would be my guess about it now.

Q. You don't know about what transpired in the bank then, from 1917 on down?

A. No, I didn't. I supposed everything was all right; no paper thrown out, and I thought everything was fine.

Q. Had the bank been put on the frequent examination list before you sold your stock?

A. Not to my knowledge. I think the bank examiner one time was called in and if certain paper was not handled in a certain way it would be put on the frequent list, but I don't know that it was or was not done.

Q. And on those occasions you were there the directors present were the two Lewises, A. E. Lewis and W. L. Lewis and Mr. Ross and yourself? A. Yes, sir.

Q. Who were the other directors at that time?

A. John Kramer and Henry Greis.

Q. Mr. Sanderson, on these occasions when the National Bank Examiner conferred with you, or you were called in to

confer with the National Bank Examiner, and he prepared this letter to the Comptroller of the Currency for the directors to sign, if he didn't tell you that he wanted all of the directors to sign that letter?

A. I think he did, yes. I would not say positive whether he said for the directors to sign it or call the meeting and have them sign it; I would not be positive which was his statement.

Q. Now, during the time you were a director of the bank, Mr. Sanderson, who was it that was vested with authority to make loans for the bank? A. Well, it was A. E. principally.

Q. A. E. Lewis? A. Yes, sir.

Q. And the directors had authorized him to make the loans for the bank, had they?

A. I don't know there was anything of that kind in the minutes of the meeting. It is so far back I couldn't remember; it was taken for granted, I think.

Q. At any rate, the directors understood he was the officer of the bank who had authority and who was charged with making the loans for the bank? A. Yes, sir.

Q. Mr. Sanderson, A. E. Lewis and W. L. Lewis, during the time that you were a stockholder and director in the bank, were the largest stockholders in the bank and owned about seventy-five per cent of the stock in the bank?

A. I don't know. I don't think I saw the stock book after 1912.

Mr. Davidson: I think that is all.

Redirect Examination by Mr. Dodds.

Q. Mr. Sanderson, do you remember about how many times you were there at the bank during 1922, when the examiner was there? A. Just once.

Q. Once. And have you examined the bank minute books over the period that you were a director?

A. No, never have seen them.

Q. I see in the minute book here, which is Government's Exhibit No. 17, that meetings of the board of directors are purported to have been held monthly right along during a matter of several years while you were a director from 1917 or 1918 down to the time you stopped, with your name in the list of directors present. Was it a fact that you were present at such monthly meetings of the board of directors during those last two or three years? A. No, it was not.

Mr. Dodds: That is all.

The Court: Stand down.

(Witness excused.)

M. A. HOUSER,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Dr. Houser, you are a practicing physician over at Tulsa, are you not? A. Practicing surgeon, yes, sir.

Q. And you have lived over there for some years?

A. Nearly twenty years.

Q. While you were over there, you had occasion to do business more or less with the Liberty National Bank of Tulsa, during the last year or so it was in existence?

A. I did, yes, sir.

Q. And doctor, I show you Government's Exhibit No. 28, being a note signed with your name for $10,000.00, payable four months after June 27, 1923, is that your signature on the note? A. Yes, sir.

Q. And will you tell the jury, Doctor, just as shortly as you can how you came to execute that note to the bank and whether you got any consideration for it, whether you got any money by reason of executing it?

Mr. Davidson: The defendants object to this witness' testimony upon the same grounds and for the same reasons we objected to the testimony of John T. Kramer.

The Court: Let it go in.

Mr. Davidson: And let the record show I object and except to each one of these witnesses that are asked questions along that line.

A. Why I went into the Liberty National Bank for the purpose of getting some American Bankers Association travelers checks. I was going on a vacation. Mr. Lloyd Lewis stopped me and talked with me a little while and asked me what I was going to do and I told him I was going on a vacation and stated what I was after and he had one of the boys take care of me, one of the boys in the bank issue these checks. And after I had purchased these checks and turned around to leave the bank he stopped me and explained. I don't know as I am making myself understood here thoroughly; I will try to do it. He stopped me and said that he and his brother had an option on an oil property; that they had sold and that it would make an immense amount of money; that they didn't have money enough to finance the thing, and I had bought some stock in the bank for which I was paying, had given my note in payment for the stock, perhaps made a cash payment in the beginning. I don't remember about that, but anyway, I

had given a note in payment for this stock and I was paying in out, and he stopped me and explained to me how much money would be made by the consummation of the deal, and he says, "you know we are all trying to make money, Doctor, and it will be a good thing, it is a fine thing, and we haven't money enough quite to handle it, and as officers of the bank we don't feel like borrowing it from the bank but we would like to let you have this money and we will give you our note for your protection, our personal note.

Q. Well, Doctor, was any representation made to you at that time as to whether or not you would have to pay your note to the bank; whether you would be called upon to pay it.

Mr. Davidson: To which the defendants each object because any release for liability must be in writing, and for the further reason that the officers of a bank have no authority to make any agreement in a transaction of that kind on a loan that they will never call upon the parties for the payment of it.

The Court: That is very true and it would not be binding but that is not really the question in the case; whether he gave the note on these representations or not.

Mr. Davidson: Well, if he did give the note on those representations, if your honor please——

The Court: It might be enforceable, but he would not perhaps think so.

Mr. Davidson: Note an exception.

A. I was informed that I would never need to think about this thing further; that it would be taken care of and I would never have to pay any interest or anything else on the note; it would only be for a few days anyway.

Q. As a matter of fact, Doctor, were you called upon to pay interest on the note? A. I never was, no, sir.

Q. And I notice that the note was for four months from June 27th; that would bring it due in October, '27. Was the note presented to you for payment when it was due in October?

A. I never saw—I never—no, it never was presented to me.

Q. Did you ever hear of it again until after the bank closed? A. No, sir.

Mr. Dodds: That is all.

Mr. Williams: I would like to have the court instruct the jury as to the exact purpose for which this testimony was permitted.

The Court: To show the intent with which these matters were done and the knowledge of the situation.

Mr. Davidson: The intent with which the offense is charged in the indictment?

The Court: Yes, and knowledge of what was going on there.

Cross Examination by Mr. Davidson.

Q. Doctor, how long had you known A. E. Lewis and W. L. Lewis at the time this note was made, in June, 1923?

A. Well, I can't answer that definitely, but I should say approximately ten years.

Q. You were a close friend and acquaintance of the Lewises, weren't you?

A. Well, I did all my business there, yes, sir.

Q. You are and were then engaged in the practice of surgery at Tulsa? A. Yes, sir.

Q. You enjoyed, and do now, a very large practice, do you not, Doctor?

A. Well I have—I have a very comfortable practice, yes, sir.

Q. How many surgical operations have you performed in the last five years?

Mr. Dodds: Oh, I think that that is far afield, if your honor please. We agree that he has performed a lot of them and they were good ones.

Mr. Davidson: Well, I will get down to the point I am after, if your honor please.

The Court: Boil it down there now; ask him what you want to get at.

By Mr. Davidson:

Q. Doctor, at the time this note was made to the bank, you were solvent and the note was collectible, wasn't it?

A. Well, I don't know; I could not have borrowed that of them.

Q. Well, you had property sufficient to enable them to make the note out of you; it was a collectible note?

A. No, I had no property.

Q. How much income did you have a year from your practice? A. Well, I had——

Mr. Dodds: I think that that is wholly immaterial here, if your honor please; it is a matter of the personal affairs of the witness that cannot have anything to do with this case.

The Court: If there is to be any claim asserted that this was a loan to this man in the usual course of business—banking business, I will allow you to answer.

Mr. Davidson: Well, that is what we claim, if your honor please.

Mr. Dodds: I might say, to shorten the thing, if your honor please, that we do not claim that this witness was insolvent, nor do we claim he was unable to pay a ten thousand dollar note if he had made the note in due course of business and was indebted for it.

The Court: All right.

Mr. Davidson: If you concede that this man was solvent——

The Court: He does; he concedes he is solvent and he could have paid the note.

Mr. Dodds: Sure.

Mr. Davidson: Then we don't care to ask him, if that condition prevailed throughout the time that the Liberty National Bank was in operation.

Mr. Dodds: Absolutely.

The Court: All right.

By Mr. Davidson:

Q. Doctor, at the time you made this note to the Liberty National Bank, at the time this note was made to the Liberty National Bank, you understood that you were borrowing the money from the Liberty National Bank and in turn were letting the Lewises have it, didn't you?

A. Well, that was not my impression of it.

Q. Well, didn't they tell you they didn't feel like borrowing the money themselves from the bank because they were officers? A. They told me that they could not.

Q. Therefore they wanted you to borrow it, isn't that it?

A. I think that was the way it was put to me.

Q. And they did give you their note? A. Yes, sir.

Q. For ten thousand dollars, at the same time that you made your note to the Liberty National Bank? A. Yes, sir.

Mr. Davidson: I think that is all.

The Court: Stand down.

Mr. Dodds: Just a minute.

Redirect Examination by Mr. Dodds.

Q. Did the Lewises ever pay anything on that ten thousand dollar note, the defendants? A. No, sir.

Q. And do you know how they actually got the money on the ten thousand dollar note? A. No, sir.

Q. You knew they got it? A. Well, I don't know that.

Q. You don't know where the money went? A. No, sir.
Q. For the note.

Mr. Dodds: All right, that is all.

Cross Examination by Mr. Davidson.

Q. You do know that you intended they should get it, don't you?

A. Well, I don't know that, either. I just—the whole thing was so hazy to me, I don't know what the intention was. I have been in the oil fields too long to have the rush act put to me, but I fell for it.

Q. Well, you know that under your conversations there, they wanted the money to exercise an option on an oil deal?

A. That was the way it was presented to me.

Q. That was the purpose that you got the money from the bank for, to let them have it? A. Well, I presume it was.

Mr. Davidson: That is all.

Mr. Dodds: That is all, Doctor.

E. F. BLACK

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Black——

The Court: Get down to what you really—the fact that the question is a little leading will not be objectionable. Get down to what you want to prove as quickly as possible.

Q. Mr. Black, you live over in Tulsa? A. Yes, sir.
Q. And you have lived there for some time?
A. Yes, sir.
Q. You were a stockholder in the Liberty National Bank of Tulsa, were you not? A. Yes, sir.
Q. How much stock did you own in the last two or three years? A. Twenty shares.
Q. That is, the last two or three years the bank was in existence. A. Yes.
Q. Was that stock held in your own name, Mr. Black?
A. Yes, sir.
Q. And owned and paid for by you? A. Yes, sir.
Q. I show you Government's Exhibit No. 36, or, quoting from Government's Exhibit No. 36, Mr. Black, I note that your name, E. F. Black, is set down as having been present at the

annual stockholders meeting of the bank held on the 9th day of January, 1923, at Tulsa. Now, that is the January before the bank was closed in November. I ask you whether or not you were present at that stockholders meeting, Mr. Black?

A. I was not.

Q. And whether you knew anything about the meeting occurring at that time?

A. Not that I remember of. I don't know that I had any notice. I know that I was not there.

Q. And when was the last time, Mr. Black, that you were in that bank? A. In 19——

Q. Prior to that? A. 1922.

Q. 1922. Do you know what time of the year, approximately?

The Court: Well, he says postively he was not——

Mr. Dodds: Yes.

A. It was before March, in 1922.

Q. Well, I just ask you shortly whether there is anything especially that fixes it in your mind that you were not present at that meeting; that is what I want to ask you. A. Yes.

Q. Just tell the jury what it is?

A. I went in there and told them what I thought of them and I never went in afterwards. I did tell them, and I never have went in; that is, the Lewis brothers?

Q. Yes. A. I never was in the bank after that time.

Q. That was in 1922? A. Yes, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Black, had you attended the stockholders' meetings before that time? A. Never.

Q. Never had? A. No, sir.

Q. Do you mean you never attended any stockholders' meeting at any time? A. No, sir, not in that bank.

Q. You executed and sent in your proxy, didn't you, to that meeting?

A. I don't remember whether I ever did or not; I can't say that I ever did, with the Liberty.

Q. Well, can you say that you did not?

A. No, I can't; I won't say that I did or did not.

Q. Uh-huh. A. With the Liberty National Bank.

Q. Well, then, you don't know whether or not you had your proxy at the meeting on January 9, 1923?

A. I did not, on that time.

Q. You did not; you know that?

A. I remember I thought, "Well, I didn't get mine; those

fellows are sore at me, and I didn't get it," and I thought it was a funny thing I did not get it.

Q. You knew when the stockholders' meeting was held, didn't you?

A. Yes, sir—No, I don't know as I did, but I expected one at that time, the same as those other banks in Tulsa.

Q. You were a stockholder in some other bank?

A. Yes, sir.

Q. Did you attend those meetings? A. No, sir.

Q. Send in your proxies?

A. ——sometimes, and sometimes not; this last time I did not.

Q. You got sore at the Lewises because they refused to loan you a certain amount of money that they said was more than your credit was entitled to, didn't you?

A. No, sir, I did not.

Q. It was not?

A. No, sir, they didn't say anything; there was no amount of money asked. We asked them what they could loan us.

Q. You were sore at them, weren't you?

A. No, we were not sore, but we thought it was a dog-goned poor way of doing business, write on your stationery, answer your letter—I went in there and told them about it. That is what I was doing in the bank.

Q. That was about a loan?

A. Asked them how much money we could borrow from them.

Mr. Davidson: Yes, sir, that is all.

Mr. Dodds: That is all, Mr. Black.

The Court: That is all.

LELIA KEYS

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Your name is Miss Keys, is it not? A. It is.

Q. What is your first name? A. Lelia.

Q. What office or position do you hold here in the state of Oklahoma?

A. Chief Clerk in the Secretary of State's office.

Q. You have with you, Miss Keys, the articles of incorporation of the—the original articles of incorporation of the Mingo Company? A. Yes, sir.

Q. And the Lincoln Company. Just let me take those. I can

get to it quicker. Miss Keys, I will ask you whether Government's Exhibits Nos. 38 and 39, are in fact duly compared, certified copies of the original articles of incorporation of the Mingo and Lincoln Companies?

Mr. Dodds: I do not desire, if your honor please, to take these original records out of the hands of the Secretary of State, is the purpose in proving the copies.

A. They are.

Mr. Dodds: Is counsel satisfied that these are copies?

Mr. Davidson: I think so.

The Court: Are they certified under the Act of Congress?

Mr. Dodds: Yes, they are certified, but as a local matter here in the state——

Mr. Davidson: We have no objection to the copies rather than the originals.

The Court: All right.

Mr. Davidson: We do object to the competency of the evidence, on the ground it is immaterial; does not tend to prove any issue in the case.

Mr. Dodds' That is all then, witness. Let me take those a second. That is all.

The Court: Proceed.

Mr. Dodds: Call the next witness.

RAY FELLOWS

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Fellows, you are an attorney practicing law in the City of Tulsa, are you not? A. Yes, sir.

Q. Partnership with Mr. Bell, and your firm is Bell and Fellows? A. It is.

Q. And you have been in the practice over there for a good many years, have you not? A. About fifteen years.

Q. As a practicing attorney over there, you were—had occasion from time to time to do some work for the two defendants here, the two Lewises? A. I did.

Q. And I ask you, Mr. Fellows, looking at Government's Exhibit No. 38, whether you prepared the articles of incorporation of the Mingo Company? A. Yes, sir.

Q. The articles of incorporation of the Mingo Company are offered in evidence, if your honor please, that being the corporation executing one of the notes here in question.

Mr. Davidson: To which the defendants object, because it is immaterial and does not prove or tend to prove any issues in the case.

The Court: Let it go in.

Mr. Davidson: Note an exception.

By Mr. Dodds:

Q. I ask you the same question, Mr. Fellows, to make it short, as to No. 39, you prepared those articles of incorporation for the Lincoln Company? A. Yes, sir.

Q. Yes.

Mr. Dodds: Now, as to Government's Exhibit No. 38, being the articles of incorporation of the Mingo Company, I notice that the names of the stockholders of the Mingo Company here given are A. E. Lewis, W. L. Lewis and R. C. Lamprich.

Q. Do you know for what purpose, Mr. Fellows, shortly the Mingo Company was organized; that is, I don't mean the corporate purpose, but as talked between you and the parties—and the two defendants here—do you know what purpose—the motive for the organization of the Mingo Company was?

Mr. Davidson: To which we object because the articles of incorporation themselves declare the purpose of the corporation.

Mr. Dodds: I refer to the reason for having such a corporation formed, rather than the corporate purpose stated in the articles.

The Court: It is questionable whether—if he, in doing this work, was acting for the defendants, whether he would be competent to testify.

Mr. Dodds: I withdraw the question, on that score, if your honor please I had forgotten he was acting as attorney for them.

Q. I notice in the articles of incorporation of the Lincoln Company the stockholders therein stated or therein named are Ray S. Fellows, Stanley D. Campbell and Roy Doyle; Ray S. Fellows is yourself? A. Yes, sir.

Q. Who is Mr. Campbell? A. He is a clerk in our office.

Q. And who is Mr. Doyle?

A. He is a clerk in our office.

Q. Are these parties the real incorporators of the company? A. They are all three dummy incorporators.

Q. And who were the real incorporators?
A. The Lewis boys.

Mr. Dodds That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Fellows, your firm does quite a large business of incorporating corporations, does it not, and did at that time and prior thereto? A. Yes, sir, quite a good deal.

Q. I will ask you if the plan followed of having those in your office incorporate the companies and have the stock afterwards transferred to the real owners wasn't the universal practice in your office at that time?

A. It was customary, at least, Bob.

Q. How many corporations a year about that time did you incorporate? A. I think about three or four a week.

Q. Three or four a week. And that was the customary way in which you did it? A. Yes, sir.

Mr. Davidson: I think that is all, if your honor please.

The Court: Stand down.

(Witness excused.)

EDWARD SOPH,

called as a witness on behalf of the Government, and being duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Soph, you are a resident of Tulsa? A. Yes, sir.

Q. And you lived in that city during the year 1923, did you not? A. Yes, sir.

Q I ask you, Mr. Soph, whether you had occasion during the year 1923 to execute a note to the Liberty National Bank of Tulsa? A. Yes, sir.

Q. More than one note, did you not? A. Yes, sir.

Q. And have you the note there?

A. No, I haven't; it is an exhibit.

Q. I hand you Government's Exhibit No. 40. Is that your signature, Mr. Soph? A. Yes, sir.

Mr. Dodds: I offer in evidence Government's Exhibit No. 40, being a note for $33,000.00 signed by Edward Soph.

Mr. Davidson: To which the defendants each object because it is immaterial and does not tend to prove or disprove any fact or issue in this case on any counts in the indictment, and for the further reason that I know of no

testimony in this case that involves this transaction at all. I cannot see where this note becomes material in this case.

Mr. Dodds: I will say, if your honor please——

The Court: Let him answer.

Mr. Davidson: Note an exception.

Q. Now, Mr. Soph, just take that note and tell the jury just as shortly as you can what you made that note for, what it represented and who got the consideration for it?

A. This note was made——

Mr. Davidson: If your honor please, may we have the same objection to this witness' testimony as we had to John Kramer's testimony and on the same grounds and same exception?

The Court: Yes.

A. Request was made of me by Mr. W. L. Lewis for a loan. Not having the necessary amount of funds in the bank he explained the method whereby I could execute this note and he could use the proceeds, and I made this note.

Q. Did you get any part of the consideration for that note, Mr. Soph? A. No, sir.

Q. I ask you if that is the note connected with the Peoria Gardens Company deal or the other one?

A. No, sir, this is not the Peoria Garden's note.

Q. That note was simply an accomodation note, as I understand it, so the Lewises could get the money? A. Yes, sir.

Q. Now tell the jury whether or not any representations were made to you at the time you made that note, whether it would be your obligation and you would have to pay it or not?

Mr. Davidson: To which the defendants each object for the reason that any representation that affects the responsibility on the part of the maker of that note would have to be in writing, and for the further reason the officers of the bank are without authority to make any such agreement or representation that would vary the terms of the written note.

The Court: That is probably true as I suggested, but the motive behind it all may be shown. He may answer.

Mr. Davidson: Note an exception.

A. I was assured at the time of making this note that the note was not an obligation of my own, that the interest and principal would be cared for without me caring for it, and that I was not obligated on the note.

Q. Now that note, Mr. Soph, is dated? A. May 29th.

Q. May 29th, 1923, and was made due June 22, 1923. I

sk you whether on June 22, you were called upon the pay the ote? A. I was not.

Q. Approximately 23 or 24 days later?

A. No, sir, I was not.

Q. Were you called upon to pay interest on the note?

A. No, sir.

Q. I notice interest payments endorsed on it, one in July, ne in August and one in October; I ask you whether you ade those payments? A. I did not.

Mr. Dodds: I think that is all. The note is offered in evidence as Government's Exhibit No. 40, being a note for $33,000.00 signed by Mr. Soph.

Mr. Davidson: To which we have already made objection and exception, if your honor please.

Cross Examination by Mr. Davidson.

Q. Mr. Soph, was this transaction on the 29th of May, 923, or was this note a renewal of a former note for a like mount? A. There were several renewals prior to that.

Q. When did the transaction originally take place, the inception of the transaction, when the first note was made?

A. Well the note you have got in your hand was actually ade in 1923. The notes prior to that were not of that amount.

Q. Well, what were the notes prior to that. Was this a enewal of a previous note?

A. It was a combination if I remember correctly of lesr amounts which totalled $33,000.00.

Q. Well, when was the first transaction had in which you orrowed money from the bank and let the Lewises have it?

A. The first accomodation note that I signed was in 1920 r 1921. I believe it was 1920.

Q. And do you remember the amount of that?

A. The original note was either $15,000.00 or $18,000.00.

Q. Do you know how many notes that this $33,000.00 note epresented the renewal of?

A. Yes, sir, a $15,000.00 and an $18,000.00.

Q. A $15,000.00 and an $18,000.00 note? A. Yes, sir.

Q. Wasn't that——

A. I would like to correct that statement now.

Q. All right.

A. That represents— it really represents $40,000.00, inasuch as the combination was a $15,000.00 and a $25,000.00, aking $40,000.00, but there was a reduction of $7,000.00.

Q. Now that $40,000.00 note was made in June, 1921, asn't it? A. That may be right.

Q. You have the $40,000.00 note with you?

A. 1921 is right, yes, sir.

Q. Have you the note there, Mr. Soph?

A. (The witness hands note to Mr. Davidson.)

Mr. Davidson: I will ask the reporter to mark for identification the note produced by the witness as defendants' exhibit No. 16.

Mr. Dodds: The Government agrees it may be offered in evidence without any preliminary questions.

The Court: I would like to ask this witness a question. What did you think you were doing when you made these notes there?

A. Judge, I didn't think much about it. They were pretty good friends of mine, and I had lots of confidence in them.

The Court: Do you carry that much confidence around now in men?

A. Not since then.

The Court: Well, you knew when they told you, you would not be liable on it, that you would have to pay it if they didn't?

A. No, sir. I didn't. I would have bet my life I would never have to pay it.

The Court: Have you found that out lately?

A. Yes, sir. I found it out lately.

Mr. Davidson: You have paid it since, haven't you?

A. Yes, sir.

The Court: I asked him whether he didn't know at the time that merely somebody saying, "you won't have to pay it," that if they didn't he would.

Mr. Davidson: We offer in evidence defendants' exhibit No. 16, if your honor please, which is a $40,000.00 note payable to Ed Soph at the Liberty National Bank signed by A. E. Lewis and W. L. Lewis.

Q. Now that is the note the Lewises gave you at the time you gave your note to the Liberty National Bank?

A. Two notes.

Q. Were there two notes to the Liberty National Bank, one for $15,000.00 and one for $25,000.00?

A. I believe that is right.

Q. And were they made at the time this $40,000.00 note was given to you?

A. Yes, sir, and then there was a $7,000.00 reduction, that made it $33,000.00.

Q. So there was no money passing from the bank on this

transaction except at the time in 1921 when the original transaction took place; is that true?

A. You say there was no money passed from the bank?

Q. Yes, there was no money passed on this $33,000.00 note?

A. I never did see any money pass, Mr. Davidson, I don't know what became of the proceeds of that note so far as the money on it was concerned.

Q. But this $33,000.00 note is a renewal of the previous notes? A. Previous transactions.

Q. Which had their inception back in 1921 on the $25,000.00 and $15,000.00 note? A. Yes, sir.

Q. And your obligations to the bank on that $33,000.00 note have been discharged, have they not, Mr. Soph?

A. Not fully. They are not fully discharged.

Q. Well, they have been settled by virtue of the deal or transaction under which certain property has been turned over or mortgaged to the bank to secure the indebtedness.

A. Well, that involves other matters. I would say that particular $33,000.00 note has not been settled.

Q. It is in process of settlement then, isn't it?

Mr. Dodds: I don't believe the witness can answer that question to say the note is in process of settlement. There is only one thing, to pay a note or not pay it.

Q. Well, this note of $33,000.00 has been surrendered to you by the bank and another transaction has taken its place, hasn't it? A. Yes, sir.

Mr. Davidson: That is all.

Re-Direct Examination by Mr. Dodds.

Q. You were never called upon to pay this note until after it got into the hands of a third party, were you?

A. Into the Security National.

Q. And you were called upon by a purchaser of the note, a third party to which it had been negotiated? A Yes, sir.

Q. You were never called upon by these defendants or their banks? A. No, sir.

Q. Mr. Soph, have the Lewises paid you any of the notes they gave you? A. Not as yet.

Mr. Dodds: That is all.

Recross Examination by Mr. Davidson.

Q. Mr. Soph, there has been $7,000.00 paid on the $40,000.00 note, hasn't there?

A. It has a credit of $7,000.00, but I didn't get the $7,000.00.

Q. Your obligations to the bank were reduced $7,000.00, weren't they?

A. Yes, sir, to balance this note.

Q. And the credit of $7,000.00 put on this note?

A. No, you see this note is only for $33,000.00. At the time they credited that $40,000.00 with $7,000.00, those two dates should agree.

Q. The note the Lewises made to you was $40,000.00?

A. Originally, yes, sir, and then April 26, 1922, they made a reduction on that $40,000.00 and we made this new note.

Q. Yes, but this note has had credit on it for $7,000.00.

A. Yes, sir, but don't understand I got the $7,000.00.

Q. I understand but the bank got the $7,000.00, didn't they? A. I don't know who got the $7,000.00.

Mr. Davidson: That is all.

(Witness excused.)

R. C. LAMPRICH,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Redirect Examination by Mr. Dodds.

Q. Mr. Lamprich, where do you reside at the present time? A. Los Angeles, California.

Q. How long have you lived out there? A. Two years.

Q. And before you went out there, you were a resident of Tulsa, Oklahoma? A. Yes, sir.

Q. And before the closing of the Liberty National Bank of Tulsa, you were an officer of that bank? A. Yes, sir.

Q. And what was the office held by you in that bank during the last year of its existence? A. Cashier.

Q. How old were you?

A. I was twenty-nine years old two years ago.

Q. Twenty-nine years old then? A. Yes, sir.

Q. And I ask you, Mr. Lamprich, whether you were an officer also of the Mingo Company? A. Yes, sir.

Q. And were you of the Lincoln Company? A. Yes, sir.

Q. Now, as to the Mingo Company, Mr. Lamprich, who were the other stockholders of that company?

A. A. E. Lewis and W. L. Lewis.

Q. Well, did you have any money in that company yourself? A. No, sir.

Q. Whether you were actually a stockholder or nominal stockholder? A. I suppose you would call it——

Q. Did you ever have any stock in your own hands?

A. There was one or two shares issued in my name, but I never had it in my hands.

Q. Did you ever pay for it or were called upon to pay for it? A. No, sir.

Q. And I ask you if the same thing is true as to the Mingo and Lincoln Companies? A. Yes, sir.

Q. I show you Government's Exhibit 29 being a note for $20,000.00, is that your signature under the name "The Lincoln Company"? A. Yes, sir.

Q. That was the Lincoln Company note signed by you?

A. Yes, sir.

Q. I show you Government's Exhibit 30 and I will ask you whether that is your name and your signing of the name of The Mingo Company? A. Yes, sir.

Q. Mr. Lamprich, you were secretary of these companies from the time they were first incorporated or shortly thereafter, were you not? A. Yes, sir.

Q. And I ask you whether or not at the time of their incorporation you had any discussion with the defendants here as to the purposes for which they were incorporated?

Mr. Davidson: To which each of the defendants object because it is immaterial and doesn't tend to prove any issue of material fact in this case.

The Court: He may answer.

Mr. Davidson: Note our exception.

A. I remember when the Lincoln Company was organized in particular I had a conversation with A. E. Lewis.

Q. What was that conversation, in short?

A. He said that the purpose of organizing this company was to—to have this company was that they could borrow more money from the bank; that is, they had all the money they could borrow in their own personal name, and by organizing a company they could get additional money—loans.

Q. And the company was the two Lewises excepting for the nominal stock that was in your name? A. Yes, sir.

Q. Now, I ask you if that same thing is true as to both of these companies, because I have forgotten which one I asked you about.

A. I don't recall any particular conversation I had in regard to these companies, but I assumed that they were organized for the same purpose.

Mr. Davidson: We object, if your honor please, to any assumption on the part of the witness.

Mr. Dodds: Yes.

Mr. Davidson: And ask that the court instruct the jury not to consider it.

The Court: Yes, that is right; he can't assume here. Proceed.

By Mr. Dodds:

Q. You were just speaking of the Mingo Company?

A. Yes, sir.

Q. Now, as to the Lincoln Company, Mr. Lamprich, you stated that the two Lewises and yourself were that company?

A. Yes, sir.

Q. And you just held nominal stock in that?

A. Yes, sir.

Q. And you never paid for it or were called upon to pay for it? A. No, sir.

Q. Was there any action among you three stockholders—any official action, sitting as a board or anything of that kind, at the time these loans were made from the bank, represented by Government's Exhibits 29 and 30? A. No, sir.

Q. How did you come to make these loans—you to sign these notes?

A. Well, among other duties at the bank, I was stenographer—did stenographic work, and they just gave me the notes to make out and told me the amounts to make them out, and told me that as I was secretary I should sign them.

Q. You should sign the notes. And the money was passed to the credit of the Lewises in due course, or do you know that?

A. Well, I think the money went to the credit of the Lincoln Company and later checked out by A. E. Lewis or W. L. Lewis.

Q. Did you ever have any other business, the Lincoln Company, than to borrow money, that you know of?

A. Well, they purchased some—these companies purchased some oil royalties and leases from A. E. Lewis and W. L. Lewis.

Q. The money was put into the company's account?

A. Yes, sir.

Q. And then after they bought the oil leases, and so forth, from the Lewises? A. Yes, sir.

Q. With that money.

A. Well, I don't say—it may not have been all the money, but part of the money was used for that.

Q. Do you know of any other kind of business that the Lincoln Company did? A. No, sir.

Q. Mr. Lamprich, do you know of any directors meetings having been held—you were cashier, by the way, you said?

A. Yes, sir.

Q. And are you familiar with the fact that the minutes

of the—the by-laws of the company provided that the cashier of the bank should act as a member of the discount committee? A. No, sir, I was not told of that fact.

Q. You don't know whether that was true or not. Were you ever a member of any discount committee? A. No, sir.

Q. While you were cashier of the bank or at any time?

A. No, sir.

Q. Did you have anything to do with making the loans that were made there by the bank? A. No, sir.

Q. As cashier? A. No, sir.

Q. I show you the minutes, being Government's Exhibit No. 36, page 23—being page 23 of the minute book; I show you the minutes of the purported meeting of March 20, 1923, to the name of E. A. Ross signed as secretary. Do you know whether that is Mr. Ross' name or not?

A. I think that is Ross' signature; that is Ross' signature.

Q. On 23? A. Yes, sir.

Q. If it is not Mr. Ross' signature, do you know who wrote it?

A. Well, I would think it was Mr. Ross' signature.

Q. Now, I show you the minutes on page 25—first, I show you the minutes on page 21; is that Mr. Ross' signature?

A. I think so, yes, sir.

Q. That is. Well, now, on 23 I ask you whether or not that is Mr. Ross' signature?

A. Well, there seems to be a difference there; it looks sort of like his signature.

Q. I show you the minutes of the meeting of the meeting on page 27; do you know who signed Mr. Ross' name to those minutes? A. I signed that.

Q. You signed his name on page 27? A. Yes, sir.

Q. How about page 29? A. I signed that one.

Q. And page 33? A. That is Mr. Ross' signature.

Q. That is his own signature. Page 39?

A. I signed that.

Q. Well, that is all I care about. Now, Mr. Lamprich, will you tell the jury how you came to sign Mr. Ross' name to the minutes of the meetings where you state that you did sign them?

A. Well, the minutes were given to me to write up by W. L. Lewis and he would also tell me to get Mr. Ross to sign and I would either go up to his office or call him up, and if he was not in—there was a few times there that W. L. Lewis said that it would be all right if I signed them; told me to sign them; said it would be all right with Ross if I signed them.

Q. You did sign it, accordingly? A. Yes, sir.

Q. That is, you signed Mr. Ross' name to that?

A. Yes, sir.

Q. I don't mean your own. And did those—the writing up of those minutes by you, you say the material was furnished by them for writing up the minutes, by the defendants?

A. It was furnished by W. L. Lewis, yes, sir.

Q. And when you wrote up those minutes, did they have any relation to the directors being in the bank there or having any meeting of any kind, or did it not?

A. I knew of no connection with that, as I never attended any meeting; the information to put in the minutes there was given to me later by W. L. Lewis.

Q. Now you are employed in a bank now, are you not, Mr. Lamprich? A. Yes, sir.

Q. I ask you whether or not, as a banker, you know that it is customary for the cashier to attend the meetings of the board of directors?

Mr. Davidson: To which we object, if your honor please.

The Court: Oh, yes, you can't prove any custom.

Mr. Dodds: All right. Question withdrawn.

The Court: Is that all.

Mr. Dodds: That is—oh, just one question. Give me those three reports to the Comptroller of the Currency.

Q. You did not ever attend the meetings as cashier of the bank? A. No, sir.

Q. At any time? A. No, sir.

Q. Mr. Lamprich, I show you Government's Exhibit No. 41; what is it, please?

A. That is a statement of the condition of the Liberty National Bank of Tulsa.

Q. Yes, ordinarily known as the report to the Comptroller of the Currency? A. Yes, sir.

Mr. Dodds: Government's Exhibit No. 41 is offered in evidence; Comptroller's certified copy.

The Court: Yes.

Mr. Davidson: Is this one of them that is charged on in the indictment?

Mr. Dodds: Yes, it is one of the three that is charged on; April 13, 1923.

The Court: Proceed.

Mr. Dodds: All right, offer in evidence Government's Exhibit No. 41, and I ask counsel to look at what will be Exhibits 42 and 43, respectively.

By Mr. Dodds:

Q. Mr. Lamprich, this is your name here as cashier of the bank? A. Yes, sir.

Q. Government's Exhibit No. 41? A. Yes, sir.

Q. And you signed and sworn to that statement before a notary public, William O. Mahler, did you? A. Yes, sir.

Q. And I ask you now, Mr. Lamprich, this is a report to the Comptroller of the Currency of the condition of the Liberty National Bank of Tulsa, at the close of business on four or five days previous to the 11th day of April—April 3rd. Now, Mr. Lamprich, who made up these reports to the Comptroller?

A. C. G. Garrett, that is made up the reports; he copied the information in so far as it referred—the information he could get off of the books of the bank, the general ledger, etc., he put that information in the statement; but the information regarding loans and the net worth of the directors, etc., was furnished by W. L. Lewis.

Q. Now, I will ask you whether that was true of this particular report you are speaking of that I just handed you?

A. That same condition was carried out on each report.

Q. I show you Government's Exhibits Nos. 42 and 43 together, and ask you whether your signature appears on both of them? A. Yes, sir.

Q. And whether they were reports made to the Comptroller of the Currency as of the dates—this one made—No. 42 made the 29th day of September and No. 43 the sixth day of July, both in 1923? A. Yes, sir.

Q. All right. Did you have anything to do with the making of those reports, Mr. Lamprich, or the finding or the furnishing of the material in them, other than simply signing them?

A. No, sir, I merely signed them after they were made up, and they were handed to me to sign.

Mr. Dodds: Yes. You may take the witness.

The Court: Cross examine.

Mr. Davidson: Just a minute.

Cross Examination by Mr. Davidson.

Q. Mr. Lamprich, how long had you been connected with the Liberty National Bank at the time that the Security National Bank purchased it?

A. Let's see; about seven and a half years, I think it was.

Q. Seven and a half years? A. Yes, sir.

Q. And during that time, had you been cashier all of the time?

A. I was cashier for about three years, I think it was.

Q. And what position did you hold during the rest of the time?

A. Why, I started in there as bookkeeper, and I worked as teller, stenographer, and did a little of everything in detail work.

Q. Now, during the time that you were cashier, when a call would come from the Comptroller of the Currency for a report, weren't there two things that had to be done, a statement prepared which had to be published in the newspapers, and a report that had to be prepared to be sent to the Comptroller of the Currency? A. Yes, sir.

Q. Who assembled the data and information that went into the statement that was published in the newspapers?

A. Well, the first little statement they got out, just showing the condition—that is, they don't give the details. There is certain times we got a call and we wanted to get it out in a hurry, why I would probably go to the books and get that out so we could—but later on the detailed report published in the paper was made up by Mr. Garrett.

Q. Made up by Mr. Garrett? A. Yes, sir.

Q. The statement that was first gotten out for the newspaper, and which you went to the books and got the information for, contained a statement as to the total amount of loans and discounts, didn't it?

A. Well, I took the information just as it appeared on the general ledger.

Q. On the general ledger? A. Yes, sir.

Q. And that is true with reference to these three statements that were made out at the same time, these three reports to the Comptroller of the Currency was made, isn't it?

A. Yes, sir.

Q. Now, when Mr. Garrett made up his report to the Comptroller of the Currency, he used the statement that you had made up for publication, didn't he?

A. In so far as it pertained to the actual figures as they appeared on the books.

Q. Well, the total amount of loans and discounts that went into those reports always appeared on the books of the bank, didn't they? A. Yes, sir, the total amount.

Q. And were obtainable from the books of the bank?

A. Yes, sir, so far as they pertained to the total loans and discounts.

Q. Yes. And that is all that had to go into the statement or the report to the Comptroller of the Currency with reference to the loans and discounts, wasn't it?

A. Well, that statement contains a clause in there where

it shows the net worth and the amount the directors have borrowed from the bank, I believe.

Q. I know, but I am not asking you about that.

A. Yes, sir.

Q. You are letting your mind run back to the other case, now. The item in Government's Exhibit No. 41, total loans and discounts, $1,996,531.70, was obtained from the books of the bank, wasn't it? A. Yes, sir.

Q. And the books of the bank showed that, didn't they?

A. Yes, sir.

Q. And that was the true amount of the loans and discounts, as appearing from the books of the bank at that time, wasn't it? A. Yes, sir.

Q. On Government's Exhibit No. 43, this item of total loans and discounts, $2,074,216.12, was obtainable from the books of the bank, wasn't it? A. Yes, sir.

Q. And that was the true condition of the books of the bank as to the amount of loans and discounts on that date, wasn't it? A. Yes, sir.

Q. In Government's Exhibit No. 42, the item under total loans and discounts, $2,106,039.51, was obtainable from the books of the bank, wasn't it? A. Yes, sir.

Q. And that was the true amount of loans and discounts as shown by the books of the bank on that date, wasn't it?

A. Yes, sir.

Q. And that item was obtained from the books of the bank, wasn't it? A. Yes, sir.

Q. And when Mr. Garrett—you nor Mr. Garrett neither one had to go to anybody nor to any other place in the world to get that information other than the books of the bank, did you? A. No, sir.

Q. And that is where you did go to get it, isn't it?

A. Yes, sir.

Q. And the information that you yourself got from the books of the bank and gave to the newspapers was the same as shown in these reports here, and as shown by the books of the bank on those days, wasn't it? A. Yes, sir.

Q. Now, Mr. Lamprich, you say that you wrote up the minutes of these meetings of the board of directors that have been offered in evidence, and to which your attention has been called? A. Yes, sir.

Q. It was a part of your duties as cashier to keep the minute book, wasn't it?

A. Why, not nothing more than to write them up on the typewriter.

Q. Well, it was your duty as cashier to write up these reports in the minute book?

A. Yes, sir, I was told to write them up, yes, sir.

Q. And you did that? A. Yes, sir.

Q. You did not have to be told that as to each meeting or each minutes that were written up, did you?

A. Yes, sir, I was told if there was no change Mr. Lewis would tell me to make it the same as the other one.

Q. The same as the other one?

A. Same directors, etc. If there was any change, he wanted any change in directors, or there was any change in directors there present, why he told me who to put in.

Q. And he gave you this direction on each occasion that you wrote up these separate meetings of the board of directors? A. Yes, sir.

Q. He did not give you the direction at some previous time for you to write up the minutes of the board of directors?

A. No, sir, he told me each time.

Q. You waited each time to write up these minutes until you got your direction from Mr. Lewis? A. Yes, sir.

Q. And didn't he tell you—did he tell you just to write them up in the usual way?

A. Well, no, he would tell me, "Now, we had a meeting the other day, and write up the minutes of the meeting as of such a date."

Q. Uh-huh. A. And who was present.

Q. Uh-huh. Now, on those occasions I will ask you if you had seen Mr. E. A. Ross in the bank in conference with Mr. A. E. Lewis and W. L. Lewis?

A. Why, Mr. Ross was frequently in the bank, but I did not know that they were having a directors' meeting on certain dates.

Q. I understand you were not in there; you didn't know what they were doing, but on these occasions Mr. Ross was in there, wasn't he?

Mr. Dodds: Pardon just a minute; on what occasions do you mean?

Mr. Davidson: The occasions immediately preceding the writing up of these minutes that you have offered in evidence.

A. No, I could not say that Mr. Ross was in on that particular date.

Q. You frequently saw him in there in conference with A. E. Lewis and W. L. Lewis, didn't you? A. Yes, sir.

Q. You testified in this case at the other trial, didn't you?

A. Yes, sir.

Q. I will ask you if you did not testify on that trial with reference to these minutes that have been offered in evidence in this case? A. Yes, sir.

Q. That about the time that you received your directions to write up the minutes that you had seen Mr. Ross in the bank in conference with Mr. A. E. Lewis and W. L. Lewis, in their private office? A. Why——

Q. Didn't you testify to that on the other trial?

A. Why, he was in frequently, I said, and I did not know just what the connection it might have with the minutes.

Q. I understand you did not know what connection it had, but he was there, wasn't he?

A. He was there every few days, yes, sir.

Q. And on these occasions when you were called on to write up these minutes, you had seen Mr. Ross there, hadn't you?

A. I would not admit it was just on that occasion, no, sir.

Q. I understand you would not admit it, but he was in the bank, wasn't he?

Mr. Dodds: The witness has answered that question five or six times, if your honor please.

Mr. Davidson: Well, it won't hurt him to answer again.

Mr. Dodds: There was no connection between the time Ross was in there and the minutes.

The Court: Proceed—proceed.

Q. Mr. Lamprich, there are some of these minutes that you say you signed Ross' name to as secretary? A. Yes, sir.

Q. On those occasions did you go to Mr. Ross' office to get his signature?

A. I either called him up or went up there.

Q. And ascertained that he was not there? A. Yes, sir.

Q. And you did that before you signed Ross' name to the minutes? A. Yes, sir.

Q. I will ask you if Mr. Ross himself didn't tell you that when he wasn't there that you might sign his name to the minutes? A. Never told me that.

Q. Are you positive of that? A. Quite positive.

Q. Sure of that? A. Sure of that, yes, sir.

Q. Now, Mr. Lamprich, there were several of these minutes which you have testified bear Mr. Ross' genuine signature that took place after the minutes to which you say you signed Ross' name. I will ask you if you disclosed to Mr. Ross after you signed his name to these minutes that you had signed his name to them?

A. I don't think I ever said anything to him about it.

Q. Do you know that you didn't? A. Yes, sir.

Q. Why didn't you tell him about it?

A. Well, I left that matter entirely up to W. L. Lewis. He said it was all right to sign.

Q. You always took the minute book to Ross to have him sign it, didn't you? A. Yes, sir.

Q. You took it to him after he had signed his name to other minutes to get his signature and didn't tell him you had signed his name to the other minutes?

Mr. Dodds: I object to this line of examination for this reason: Mr. Ross couldn't authorize this witness to sign his name to minutes or purported minutes if he had wanted to, and if he had authorized him it would not have altered the situation at all. It is just as bad one way as the other.

The Court: I think that is true. Proceed.

Q. Now, these corporations, The Lincoln Company and The Mingo Company in which you were the secretary, you were acting as a dummy secretary, as I understand you?

A. Yes, sir.

Q. In other words, you had no real interest in the corporation? A. Yes, sir.

Q. But you were elected and the records show you were the secretary of the companies? A. Yes, sir.

Q. Now, you were secretary-treasurer of the Lincoln Company and the Mingo Company, weren't you?

A. That is the position I held.

Q. And you signed all checks of the Lincoln Company and the Mingo Company, did you?

A. Why I think I did with the exception of one or two times W. L. Lewis signed some checks.

Q. Now, on this note of the Lincoln Company for $20,000.00, the proceeds of that note went to the credit of the Lincoln Company on the books of the Liberty National Bank, didn't it? A. Yes, sir.

Q. And then you drew checks on the Lincoln Company's account for the full amount of $20,000.00, payable to A. E. Lewis for oil royalties and oil leases which A. E. Lewis transferred and assigned to the Lincoln Company, didn't you?

A. The checks on those companies were usually made to A. E. Lewis and W. L. Lewis, and they took credit for them and I was advised that there was oil royalties and leases assigned over to these companies.

Q. Well, you knew they were assigned to the companies, didn't you? A. Yes, sir.

Q. You prepared the assignments, did you? A. Yes, sir.

Q. And this Lincoln Company now had for this $20,000.00, they obtained oil royalties and oil leases which were assigned to it by A. E. Lewis and held by it, isn't that true?

A. That was the assumption I had, yes, sir.

Q. Now then, the Mingo Company, what properties did it have?

A. Why they owned a farm, what they called the Mingo farm out on the Dawson road out there, and they had stock on there and this property was put in the name of the Mingo Company.

Q. And they owned the farm and the stock on it and the implements and everything of that kind, didn't they?

A. Yes, sir.

Q. And the proceeds of this $33,000.00 note of the Mingo Company went to the credit on the books of the Liberty National Bank of the Mingo Company, didn't it? A. Yes, sir.

Q. And that was taken out on checks which you signed?

A. At the direction of W. L. Lewis and A. E. Lewis.

Q. Which one of them?

A. W. L. Lewis usually directed me in regard to the Mingo Company.

Q. And who directed you in regard to the Lincoln Company? A. Well, either W. L. Lewis or A. E. Lewis.

Q Do you know which?

A. There was so many of those checks made up I couldn't say exactly.

Q. Now, at the organization of which one of these companies was it that you say A. E. Lewis was organizing these companies so they could borrow more money from the bank?

A. That was the Mingo Company.

Q. And there was nothing of that kind said to you at the organization of the Lincoln Company, was there?

A. I don't think there was.

Q. Now, as a matter of fact, Mr. Lamprich, didn't A. E. Lewis tell you that the Mingo Company was being organized to handle the farming interests and the Lincoln Company was being organized to handle the oil interests, and they were organizing these companies in order to keep separate and better handle their various lines of business?

A. He didn't put it to me exactly that way. He told me our line of credit there at the bank was full and they had to organize these companies in order to borrow more money from the bank, but he also said he was transferring some of his own personal interests over to the companies.

Q. Now, you signed these reports to the Comptroller of the Currency which are Government's Exhibits 41, 42 and 43 as cashier of the bank, didn't you? A. Yes, sir.

Q. These reports I understand you, all three of them were made up by Mr. Garrett in the bank? A. Yes, sir.

Q. And he presented them to you for your signature?

A. Yes, sir.

Q. What position did Mr. Garrett hold?

A. Vice-president.

Q. Now then, Mr. Lamprich, you did most of the stenographic work in there, did you not? A. Yes, sir.

Q. As a stenographer it was your duty to send out the notices of stockholders meetings, wasn't it? A. Yes, sir.

Q. I will ask you whether or not you did send out notices to all the stockholders of these various stockholders meetings?

A. Do you mean the annual stockholders meeting?

Q. Yes, the annual stockholders meeting? A. Yes, sir.

Mr. Dodds: When, in what year?

Q. In every year?

A. They were written up, I think, every year.

Q. And you sent them out, didn't you; you signed the notices, didn't you, yourself as cashier?

A. Why I think that I wrote up most of those stockholders' meetings, although the last two or three years——

The Court: He isn't asking about that. He is asking about the notices to the stockholders that there would be a stockholders' meeting.

A. Those notices were made up either by myself or another stenographer.

Q. And they were signed by you, weren't they?

A. I believe they were.

Q. And they were sent out by you, weren't they?

A. I cannot say that I mailed them out exactly.

Q. It was your duty to mail them out?

A. Well, the stenographer could send them out.

Q. Well, you were told to send them out, weren't you?

A. Yes, sir.

Q. Did Mr. A. E. Lewis or W. L. Lewis either one tell you not to send any notices to stockholders out?

A. I don't remember of them saying anything like that.

Q. Mr. Lamprich, just one thing further. The property of the Mingo Company which you say the Mingo Company was supposed to own, the Mingo Company did own that, didn't they? A. I think they did.

Q. And that was later transferred to the Security National Bank in payment of this indebtedness, wasn't it, represented by this note? A. Yes, sir.

Q. Now, Mr. Lamprich, you knew Mr. Griffey, did you not, the National Bank Examiner? A. Yes, sir.

Q. And you knew Mr. Burdman, the examiner before him, didn't you? A. Yes, sir.

Q. And you knew the different examiners who were there and examined the bank? A. Yes, sir.

Q. I will ask you whether after these examinations of the bank by the examiner, the examiner would dictate to you a letter for the directors to sign to the Comptroller of the Currency with reference to the condition of the bank?

A. Some of the examiners did that.

Q. Did Mr. Griffey do that?

A. I think he did dictate one letter to me, yes, sir.

Q. Didn't he dictate a letter after each examination?

A. Why, I don't——

Q. How many examinations did Mr. Griffey make?

A. I don't think he was there but once.

Q. And did he dictate a letter after that examination?

A. Yes, sir.

Q. Now, the other examiners who made examinations of the bank, Burdman, did he dictate a letter to the Comptroller of the Currency for the directors to sign after he made the examinations?

A. Why I think he wrote up his own letters. I don't think he dictated any letter to me.

Q. He did write up a letter after each examination, didn't he? A. Yes, sir.

Q. And asked that the directors all sign that?

A. Yes, sir.

Q. Did you take those letters around to the directors to be signed?

A. Well, either myself or Mr. Garrett took them and had them signed.

Q. And when you had these letters signed up they were mailed by you to the Comptroller of the Currency, weren't they? A. They were mailed by someone in the bank.

Q. And when you wrote up the minutes of the directors meetings, you wrote them up in accordance with these letters that had been sent to the Comptroller of the Currency?

A. Yes, sir.

Q. And sometimes you sent out copies of these letters to the Comptroller of the Currency? A. Copies of?

Q. Copies of the letters to the Comptroller of the Currency? A. This letter was addressed to the Comptroller.

Q. And sometimes in writing up the minutes of the meeting of the directors, you set out a copy of the letter in the minutes, didn't you? A. Yes, sir.

Mr. Davidson: I think that is all.

Redirect Examination by Mr. Dodds.

Q. Mr. Lamprich, there were some other companies borrowing money from the bank there in which the two Lewises

were the stockholders and you were a nominal stockholder, weren't you? A. Yes, sir.

Q. The Ray Gasoline Company? A. Yes, sir.

Q. They had $33,000.00 borrowed that way, didn't they? A. Yes, sir.

Q. And you were a dummy stockholder in that company? A. Yes, sir.

Q. And the Saunders Company the same way, wasn't it? A. Yes, sir.

Q. And they were all borrowers up to their limit there of $33,000.00 in the bank, weren't they? A. Yes, sir.

Mr. Davidson: We object to this line of testimony, if your honor please, as to the Saunders Company and the Ray Gasoline Company because they are not in any way connected with the transactions in this case.

Mr. Dodds: I call my brother's attention to the fact he introduced them himself in evidence yesterday and I am reading them from his exhibits. The Ray Gasoline Company had $33,000.00 and the Saunders Company $32,900.00.

Mr. Davidson: The matter involved here is not the truthfulness of those letters there but the entries in the minute book and the reports to the Comptroller of the Currency.

The Court: They are introduced more as similar like transactions of the same character.

Mr. Davidson: Note an exception.

Q. Mr. Lamprich, at the time that the three reports were made up here that are offered in evidence, three reports to the Comptroller being Government's Exhibits Nos. 43, 32 and 41, I ask you whether Government's Exhibit No. 35, the note of Mason Kittess was then in the bank, in the year 1923? A. That was a note signed by Kittess and it is on the Liberty form and discounted by the bank.

Q. Being a note in the bank at that time it would be included in the loans and discounts in these reports as you have stated? A. Yes, sir.

Mr. Davidson: We object to this testimony because it is not the best evidence as to whether or not it was there. The books of the bank themselves will show whether it was included in that statement.

Mr. Dodds: We will introduce the books of the bank, but this witness is the one testifying as to how the statements were made up.

The Court: Yes.

Q. Now, I also show you Government's Exhibit Nos. 44 and 45, Mr. Lamprich, are you familiar with the paper, that paper, Government's exhibit 44, do you know what it is?

A. That is a note signed by Mr. R. A. Koons.

Q. Was that there in the bank during the latter part of the time you were there, during the last year?

A. Let's see, it was made December 22nd.

Q. 1922?

A. And I see the last interest is paid to December 17, 1923.

Q. So it was there all the last ten months in the bank? Is the same true of the Ballard note, the Government's next exhibit? A. Yes, sir.

Q. Now, those two notes being there in the bank under the system that you say was used in making up these statements, that is the assets of the bank, the loans and discounts were taken from the books of the bank would these notes naturally be included in this item of loans and discounts so far as you know? A. Yes, sir.

Q. There was never anything left off among the commercial paper in the bank that you know of in making up this report? A. No, sir.

Q. Nothing intentionally, anyway? A. No, sir.

Q. I call your attention to Government's Exhibit No. 41, to the name A. E. Lewis. Are you familiar with the signature of A. E. Lewis? A. Yes, sir.

Q. And that is his signature? A. Yes, sir.

Q. I call your attention on the same exhibit to the signature of W. L. Lewis signed to this report to the Comptroller of the Currency on the 11th day of April, 1923, is that his signature also? A. Yes, sir.

Q. You are familiar with his writing and know that it is? A. Yes, sir.

Q. I show you Government's Exhibit No. 42, being the report to the Comptroller of the Currency of the 29th day of September, 1923, and ask you if you find the name A. E. Lewis on that report? A. Yes, sir.

Q. And do you know that is his signature? A. Yes, sir.

Q I ask you the same question as to the signature of W. L. Lewis? A. Yes, sir.

Q. I show you Government's Exhibit 43 and ask you if you find the name A. E. Lewis on that report to the Comptroller, 6th of July, 1923? A. Yes, sir.

Q. And the name W. L. Lewis? A. Yes, sir.

Q. Do you know that is their signatures in both instances? A. Yes, sir.

Mr. Dodds: That is all.

Mr. Davidson: Just one thing further, if your honor please.

Recross Examination by Mr. Davidson.

Q. Mr. Lamprich, you say that the note of Mason Kittess, Government's Exhibit No. 35, and the note of R. A Koons which is Government's Exhibit No. 44, and the note of A. M. Ballard, which is Government's Exhibit No. 45, were included in the items of loans and discounts in each one of these three reports to the Comptroller of the Currency that has been introduced here?

A. Why the notes that were discounted by the bank would be included in that.

Q. Those items of loans and discounts in each one of those three reports to the Comptroller of the Currency is a true and accurate item so far as the books of the bank show, wasn't it? A. Yes, sir.

Q. It reflected accurately the books of the bank on loans and discounts, didn't it? A. Yes, sir.

Q. You never made any examination of the books of the bank to ascertain whether or not these three notes were included in those items? A. No, sir.

Q. Now, Mr. Lamprich, the proceeds of this note of R. A. Koons of $29,500.00 dated December 22, 1922, went to the credit of R. A. Koons on the books of the Liberty National Bank, didn't it?

A. I don't know; I didn't handle that.

Q. Did you ever examine the books of the bank to see?

A. No, sir.

Mr. Dodds: I might say those books are here and we will offer them in evidence if it will save counsel any time.

Q. I will ask you whether or not you know that the proceeds of the $15,000.00 Mason Kittess note went into a cashier's check for $15,000.00 payable to A. R. Mitchell?

A. I don't know about that transaction.

Q. Do you know about the Ballard transaction, that the proceeds of that note went to Ballard's credit on the books of the bank? A. I don't recall the transaction.

Mr. Davidson: All right, that's all.

Redirect Examination by Mr. Dodds.

Q. Mr. Lamprich, as far as you know, in making up these reports, I ask you whether anything ever went into them that was not true, so far as you know?

A. So far as I know there was nothing put in them that wasn't true.

Q. Your intention was that they were to be correct at all times? A. Yes, sir.

By Mr. Davidson:

Q. And as a matter of fact they were correct? A. Yes, sir.

By Mr. Dodds:

Q. If the books of the bank were incorrect, then these reports would be incorrect? A. Yes, sir.

Mr. Dodds: That is all.

(Witness excused.)

E. FORREST HAYDEN,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Dr. Hayden, you live at Tulsa? A. Yes, sir.

Q. And you are a practicing physician there, are you not? A. Yes, sir.

Q. Lived there for some years? A. Yes, sir.

Q. Had occasion to do business with the Liberty National Bank during the year 1923? A. Yes, sir.

Q. And I show you Government's Exhibit No. 26, being a note heretofore read in evidence of E. Forrest Hayden for the sum of $5,000.00, dated May 14, 1923, note No. 20217, and ask you whether or not that is your note? A. Yes, sir.

Q. You made that note to the bank on that date or approximately the date that it is dated? A. Yes, sir.

Q. Will you state to the jury the circumstances, just as shortly as you can, under which you made that note.

Mr. Davidson: To which each of these defendants object for the same reason assigned to the John Kramer testimony and desire to save an exception to the court's ruling on that.

The Court: Proceed.

A. Sometime in June, 1923, Mr. W. L. Lewis called me by 'phone and asked me—told me that he had some business matter he wanted to talk to me about—at least he wanted to see me, and asked me to come by the bank at my convenience. And so, I think the same day or the next day, I went into the bank. He called me back into the private office and told me that the bank needed some money and then asked me if I would not sign a note to the bank for five thousand dollars.

and at the same time he went on to tell me about the circumstances of the bank and told me that he and Mr. A. E. Lewis, the president of the bank, owned the controlling stock in the bank and that they were business partners in everything in which they were concerned—went on to tell me that they were interested in other different properties, and so on and so forth, and stated that the bank was a little low on funds, or they had used up their funds, or something of the sort—stated he wanted me to sign this note for five thousand dollars and told me also that in order to make me perfectly secure—also stated that I would not be obligated——

The Court: You may proceed with the trial until some point is reached where you want an exception, and then I will hear you.

A. Stated to me that in case I signed this note that I would not be obligated in any particular, and that I would not be assuming any obligation, and stated, as a matter of securing me, that he, as vice-president and his brother, as president of the bank, would sign a note in like amount, for five thousand dollars, and asked me to leave this note which they signed in the bank and stated that I might take it up at any time if I so desired; that if I came in and asked for my note that—returned their note, that my note would be delivered to me, which I did, and placed the note which they signed to me in the safety box in the bank, in a private locker and left it there. I never thought anything more about it after that until November, when the bank was closed.

Q. Now, Dr. Hayden, did you ever get anything by reason of your having signed this note except that Lewis note that was put there in the bank, of five thousand dollars?

A. No, sir.

Q. You never got any part of this five thousand dollars?

A. No, sir.

Mr. Dodds: Just a minute——

Q. Have the Lewises ever paid anything on that five thousand dollar note? A. No, sir.

Q. That they made at the same time? A. No, sir.

Q. Did they state to you definitely at the time that you made this note for whose benefit it was to be made—this five thousand dollar note?

A. I understood that it was for the benefit of the bank.

Q. It was for the benefit of the bank?

A. Yes, sir, and when Mr. Lewis went on to tell me, the interest of the bank and what they owned, and that they owned the controlling stock, and also mentioned the fact that they each carried an insurance policy, one in favor of the other,

that was to be used in case any obligation—in case they should die and any obligation might fall on the bank that would take care of the bank's obligations, and I understood all the way through it was a banking proposition.

Q. Were you obligated to the bank on any other paper at that time, Doctor? A. Yes, sir.

Q. In what sum, do you remember?

A. One thousand dollars.

Q. And you carried an account there at the bank, did you not?

A. Yes, sir, had for about twelve years—ten or twelve.

Q. Practically since the organization of the bank?

A. Yes, sir.

Q. Did you—were you called upon, Dr. Hayden—I notice this note is made demand note, on June 14—were you called upon to pay any interest on that note between June and the following November, when the bank closed? A. No, sir.

Q. I ask you whether, as a matter of fact, Dr. Hayden, you knew the note was in existence until at the time the bank closed, until after you were asked to pay it by some other party?

A. No, sir, I did not hear anything more from it from the time it was made until I was asked by the Security Bank to——

Q. And do you know of interest having been charged to your account in the bank? A. No, sir.

Q. Or any other recognition of the fact that you had made a note there to the Liberty Bank? A. No, sir.

Q. And your first information was from what source?

A. The Security Bank.

Q. After the consolidation? A. Yes, sir.

Mr. Dodds: I think that that is all.

Cross Examination by Mr. Davidson.

Q. Doctor, you say that you had this conversation with A. E. Lewis or W. L. Lewis? A. W. L.

Q. W. L. And W. L. Lewis told you that the bank wanted this money? A. That is the way I understood it, yes, sir.

Q. Well, now, did W. L. Lewis say that, or did you just draw that conclusion from what was said?

A. Well, that is what he said.

Q. That is what he said?

A. Yes, sir. I understood that I was—had never dealt with him in any other particular, except as a banking institution, and that is what was said.

Q. And in this same conversation, now, he told you about

his carrying life insurance for the benefit of his brother, and of his brother carrying life insurance for the benefit of W. L?

A. That was for the benefit of the bank, in the long run.

Q. For the benefit of the bank?

A. Yes, sir, in case anything should happen to either that the bank would be safe in their obligations—at least this insurance was to go for that particular purpose.

Q. Did he tell you that the bank was the beneficiary under these policies? A. That is the way I understood it, yes, sir.

Q. You know that is not a fact, don't you?

A. I don't know at all.

Q. Don't you know that these insurance policies, A. E's. insurance policy was for the benefit of W. L. Lewis, and W. L. Lewis' insurance policy was for the benefit of A. E. Lewis?

A. Well——

Mr. Dodds: We admit that it was not for the benefit of the bank, any of these insurance policies.

The Court: Very well, if that is satisfactory.

Mr. Davidson: Well, what I am trying to get at is, this witness knew that.

Q. And you knew that, didn't you, Doctor?

A. How was the question, now?

Q. You knew that these life insurance policies we are talking about——

A. Yes, sir; I knew—I was told that one was for the other, but that they carried them in order to make the bank safe in its dealings.

Q. How would that make the bank safe in its dealings, if they were for the benefit of each other and they were the beneficiaries?

A. I don't know about that; it might not have been.

Q. In this conversation, they told you about the different properties they owned, individually, didn't they? A. Yes, sir.

Q. Was A. E. Lewis present? A. No, sir.

Q. You were just talking with W. L. Lewis? A. Yes, sir.

Q. W. L. Lewis told you all the properties that A. E. Lewis had? A. Yes, sir.

Q. And he told you what properties W. L. Lewis had?

A. Yes, sir, told me they were partners in all of these propositions.

Q. Did he tell you about what A. E. Lewis was worth?

A. No, sir, he didn't tell me, I don't think.

Q. Did he tell you about what W. L. Lewis was worth?

A. Not in terms of exactness, no sir.

Q. Now, at the time that you made this note of five thousand dollars to the Liberty National Bank, W. L. Lewis and

A. E. Lewis gave you their individual notes for five thousand dollars, didn't they?

A. They gave me their note signed by the two, yes, sir.

Q. And told you that at any time that you wanted to take up your note to the bank you could do it by bringing their note back to them? A. Yes, sir.

Q. That they would pay their note and that you could pay your note to the bank?

A. No, they told me they would bring my note and exchange it; they would give me my note back and that I should return their note—they would give me my note back in exchange.

Q. In exchange for the note you gave to the bank?

A. Yes, sir.

Q. You never did go back there for the exchange, did you? A. No, sir.

Q. You had a financial statement—you made a financial statement to the bank, did you not? A. Yes, sir.

Q. That financial statement showed a net worth at that time of about sixty-five thousand dollars, didn't it, Doctor?

Mr. Dodds: We admit that the Doctor was thoroughly solvent, has been for years, and is now.

Mr. Davidson: Well, we want to show that these officers of the bank had taken the precaution to secure a financial statement from him on these loans.

The Court: Very well.

By Mr. Davidson:

Q. Now, why, if you know, was A. E. Lewis telling you about their properties, of A. E. Lewis' and his individually, and W. L. Lewis' as an individual, if this transaction that you had was with the bank and the bank was borrowing the five thousand dollars from you?

Mr. Dodds: Object, if your honor please; this witness can't tell why the Lewises told him what they did; nobody could tell.

The Court: I suppose the mere opinion about the matter, you were asking for his opinion about the matter?

Mr. Davidson: Well, that is what it really amounts to, if your honor please, what was in his mind at that time as reflecting upon what the transaction actually was.

The Court: No, it is not what is in his mind; it is what is in somebody else's mind.

Mr. Dodds: Yes, sir.

By Mr. Davidson:

Q. Well, I will ask you, Doctor, if you did not testify on the trial of this other case at Muskogee?

A. Yes, sir, I testified over there.

Q. I will ask you if this question was not asked you on the trial of the other case at Muskogee, in August of last year, and the following answer made to that question by you: "Question—" This is page 249 of the record. "Question: Didn't say, then, that the bank wanted to use this note itself? No, just said we need some money, and asked me if I would not sign a note for the amount." Was that question asked you and that answer made? A. I presume so.

Q. You testified on the trial of the other case in Hugo, didn't you, Doctor? A. Yes, sir.

Q. I will ask if on that trial, in May of last year, if the following question was not asked you and the following answer made to it: "Question: Doctor Hayden, at the time you had this conversation with W. L. Lewis, with reference to making this note to the bank for five thousand dollars, in June, 1923, what was said, as nearly as you can repeat it, Doctor, by Mr. Lewis, with reference to what this money was wanted for?" And your answer was: "He just stated that they needed some money, and I did not go into any details as to exactly what he did need it for but he went on to relate all the circumstances incidental to the standing of the bank and he told me that he carried $125,000 life insurance in favor——"

Mr. Davidson: Well, that is interrupted there by a question. "Question: W. L. Lewis, himself,". Was that answer made to that question?

A. Yes, sir.

Q. And then wasn't this question asked you——

Mr. Davidson: No, that is repetition.

Q. Now, Doctor, you never paid any more attention to this transaction until after the Security National Bank purchased the Liberty, did you? A. No, sir.

Q. This note of the Lewises to you was placed by you in your safety deposit box in the bank, wasn't it?

A. It was placed in a safety box.

Q. And you got it out of that box after the Security bank took over the Liberty?

A. No, the bank presented to me—the officials at the Security Bank presented it to me after they had taken over the Liberty.

Mr. Davidson: I see. That is all.

Mr. Dodds: That is all, Doctor.

J. W. MCDONNELL,

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. McDonnell, your full name is James McDinnell? A. Yes, sir.

Q. You live over at Tulsa? A. Yes, sir.

Q. And you have been a resident there for some years, haven't you? A. Yes, sir.

Q. At one time had some business connection with one of the defendants here, Lloyd Lewis? A. Yes, sir.

Q. That is, in your business as a—conducting a riding academy, riding school over there, isn't that so? A. Yes, sir.

Q. And also in this business of exhibiting race horses and show horses around the country? A. Yes, sir.

Q. You took his horses around for him?

A. No, no; I kept his horses at my place and trained several for him, but never did take them away to show them,

Q. Mr. McDonnell, I show you Government's Exhibit No. 25, being a note in the sum of $23,313.72, signed James—J. W. McDonnell; is that your signature to that note?

A. Yes, sir.

Q. The note is in two pieces; that is all one instrument, is it, as you signed it? A. Yes, sir.

Q. Now, Mr. McDonnell, I want you to state just as briefly as you can to the jury the circumstances under which you made that note for $23,000 and odd on May 19, 1923?

Mr. Davidson: To which each of the defendants object, for the same reason assigned to the testimony of John T. Kramer.

The Court: Same ruling.

Mr. Davidson: Note an exception, and may we have the same objection to all the questions asked this witness, relative to this transaction?

The Court: Yes, sir, proceed.

A. Well, this is 1919, that he asked me to sign this note, and he told me that—Mr. Lloyd Lewis told me that he wanted to buy some——

Mr. Davidson: Just a moment, Mr. McDonnell. If your honor please, we want to make this objection to this

testimony: On the ground that the transaction, having occurred back in 1919, is too far removed from the transactions charged on in the indictment to have any weight upon the question of intent.

The Court: Well, I don't know about that; I will let him answer.

Mr. Davidson: Note an exception.

A. Said he wanted to buy this stock—said he had a tip that it was coming higher, and it did not look well for bankers to be trading in stocks and he wanted to use my name to buy these stocks.

Mr. Dodds: What stocks?

A. The Sinclair stocks.

Q. Yes.

A. I told him all right, if he wanted to use my name it was all right. Well, then, he said he would like for me to sign a note for $12,500, and so I signed it and he bought the stocks in my name. Well, the stocks went down and he kept them for year after year, you know, and the first of every year he said that note of mine will have to be renewed and he would ask me to sign a note. Well, I would just sign a blank note and he would always tear my name out of the corner of the old one and hand it to me, and when the bank—when they turned this over to the other bank, why it was up to $23,000 and something, and when I first signed it it was just $12,500.

Q. The date of this last note—the one you made last was May 19, 1923? A. Yes.

Q. That would be the May just before the bank closed in November? A. Yes.

Q. Now, did you ever get these stocks, the Sinclair stock yourself? A. No, I never did see them.

Q. Were they ever delivered to you? A. No, sir.

Q. Did you ever know where they went?

A. Well, the Security National got them.

Q. They got them. You say you signed the notes as you were asked and signed blank notes and the amounts were filled in afterwards? A. Yes, sir.

Q. And that you don't know what—how the note grew from $12,500 to $23,000? A. No, sir.

Q. Now, Mr. McDonnell, did you ever get any consideration of any kind in the world, money for that, for those notes that you executed along, culminating in this one? A. No, sir.

Q. Was there any time, Mr. McDonnell, during the course of time that you had any such sum of money as would pay a note like that? A. Yes, sir.

Q. You did not have any particular amount of property r wealth during those years?

A. No, I told them nobody would take my note for $12,-00 when he asked me.

Q. What did he say to that?

A. Well, he said they were going to pay cash, or had cash, r something, so I just signed it.

Q. I ask you whether the Lewises had any dealings with our brother? A. Yes.

Q. Or had his note? A. Yes, sir.

Q. How much, do you know?

A. Well, it was for $12,500, too.

Q. What was your brother's business over at Tulsa?

A. Well, he has—at this time when he signed this note irst, he was with the World; he had a route with the World.

Q. He was a news carrier there? A. Yes, sir.

Q. I show you Government's Exhibit No. 46, witness, and sk you if you find your signature thereon—turn it over?

A. Yes, sir.

Q. J. W. McDonnell. You wrote that, did you?

A. Yes, sir.

Q. Was this paper filled in at the time that your wrote t; were those items on it? A. No, sir.

Mr. Dodds: I offer this Government's Exhibit No. 46 in evidence, being a financial statement, purporting to be a financial statement of the witness McDonnell here, dated under date of May 10, 1923, at the time of this last note.

The Court: Very well.

Mr. Dodds: James W. McDonnell, address, 1821 South Cheyenne, Tulsa, Oklahoma, business real estate.

Q. Were you in the real estate business? A. No, sir.

Q. Were you ever in the real estate business? A. No, sir.

Mr. Dodds: To the Liberty National Bank, for the purpose of obtaining loans and discounts on paper with you and otherwise to procure credit from time to time I furnish you with the following statement and information which is, and is shown by my books to be, a true and correct statement of my financial condition of May 10, 1923. I agree to and will notify you immediately in writing——

I will hand this to the jury. You can read what else is in there. The financial statement prepared has: Cash on hand and in bank $513.77. Did you have that amount of cash on hand on May 13—May 10, 1923?

A. Well, I could not say.

Q. You might have had that deposit there at the bank at that time? A. Yes, sir.

Q. Bills, notes receivable, all good, due from customers, $2,000. Did you have notes due from your customers for $2,000 in May, 1923? Well, I dont think I did.

Q. Yes. Do you remember it, if you did? A. No, I don't.

Q. Town and city real estate, at actual market value, $65,000. Did you have $65,000 worth of real estate in May, 1923?

A. No, sir.

Q. How much did you have Jim?

A. Well, I had three pieces of property, but then my equity was not very big in any of them.

Q. You had borrowed on them? A. Yes, sir.

Q. And were they—what were the three pieces worth, just roughly? What would you estimate, not saying anything about what you owed on them; what were they worth?

A. Well, just about—six months before—before this statement was made I gave $14,000 for this——

Q. For one piece?

A. For one piece, and I paid $3500 down on it.

Q. Then your equity in that piece was $3500? A. Yes, sir.

Q. And what other properties?

A. Well, I had—I built a building on there for, may be, $1,000 or $1,500, a building on it.

Q. Yes; so it would be worth, say $5,000.00? A. Yes, sir.

Q. Your equity. And did you owe for the building?

A. No, I did not owe for the building.

Q. You did not owe for that? A. No.

Q. What other real estate did you have?

A. Then I had a piece of property on Maple Ridge.

Q. What was that worch?

A. Well, it was worth about fifteen or sixteen thousand.

Q. How much did you owe on that?

A. Well, I had a loan on it for $13,500.

Q. So you had an equity of a couple of three thousand dollars in that? A. Yes, sir.

Q. And did you own any more real estate?

A. Yes, sir, I owned the place where I lived, on South Cheyenne, 1821 South Cheyenne.

Q. What was that worth?

A. Well, it was worth ten or twelve thousand, I guess.

Q. How much was your equity in it worth?

A. Well, I owed $4500 on it.

Q. So you had the total of something like about nine or ten thousand dollars' worth of real estate as your equity?

A. Yes, sir.

Q. All told. Now, there is here listed the 432 shares of Sinclair oil stock, at $14,256. You don't know anything about that or what it was worth, do you? A. No, sir.

Q. That was that stock you are speaking of that they bought in your name?

A. Yes, I told them when I turned it over to the Security Bank—I think they took it in at $9,000.00.

Q. Horses and cattle, $7,500; did you have that amount of stock on hand? A. Well, I think so, yes.

Q. Did you have any cattle? A. No; I had a cow.

Q. You had a cow? A. Yes, sir.

Q. That totals $99,269.77 as your assets. Bills payable $32,213.72. I guess you probably did own that much, didn't you? A. I expect I did.

Q. On this various property? A. Yes.

Q. And mortgages on town and city real estate, $10,000; total liabilities of $42,000. Giving you a net worth at that time as $57,056. Now, under your testimony here, your net worth at that time was not over $15,000, was it? A. No, sir.

Q. Huh? A. No, sir.

Q. And now I want to ask you again, just so I will be sure here; you have—you saw there was nothing in this statement at the time you signed it? A. No, sir.

Q. How did you come to sign it in blank?

A. Well, he asked me to make a statement, you know, and I didn't get time to make it, and I was going away to race some horses, and the day I had the horses loaded I went in there and told him I didn't get to make that statement and that he knew what I had; if he would just hand me one of the things I would sign it and he could fill it out, so he handed it to me and I signed it.

Q. Yes, and he filled it out? A. And I went on my way.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. McDonnell, W. L. Lewis was thoroughly familiar with all the property you had, wasn't he? A. Yes, sir.

Q. He knew the description of it and the locations of it, and the reasonable value of it, didn't he? A. Yes, sir.

Q. And he knew what indebtedness you had against these different pieces of property, didn't he? A. Yes, sir.

Q. And you say that you signed this statement in blank? A. Yes, sir.

Q. And gave it to Lloyd Lewis, W. L. Lewis, and told him that he knew what you had and the value of it and for him to fill it out? A. Yes, sir.

Q. Now, then, the properties that you owned are properly described in here, aren't they? A. Yes, sir.

Q. You did own all of the property that is listed here, did you? A. Yes, sir.

Q. You say that you don't know for sure whether you had $2,000.00 in account due you at that time or not?

A. No, I couldn't tell.

Q. You just don't remember about that? A. No.

Q. You say you don't know anything about the value of these 432 shares of this Sinclair stock?

A. No, I didn't know anything about that.

Q. Now, was that the stock that was purchased with the proceeds of this $4,500.00 note that you made to the bank?

A. I think it was, yes, sir.

Q. Now, when this Sinclair stock was bought, that was put up as collateral security for your note to the bank, wasn't it? A. Well, it must have been, but I didn't know it then.

Q. You didn't know it?

A I didn't know it was there, no.

Q At the time you signed that note, wasn't it understood that was to go over behind it as collateral security?

A. No, I didn't know nothing about it.

Q. Did you ever go back there to find out whether the stock had been put up? A. Never did.

Q. This transaction occurred back in 1919, you say?

A. Yes, sir.

Q. This note was afterwards renewed, wasn't it?

A. Yes, sir.

Q. It was renewed several times, too, wasn't it, Jim?

A. Yes, sir.

Q. And you got back the old note when you renewed, when you made the renewal note, didn't you, each time? A. No, sir.

Q. Well, what was done with it?

A. Well, he would tear the name out of the corner and hand it to me.

Q. You were there and saw him tear the name off?

A. I seen him tear it off and throw it down into the basket, yes, sir.

Q. You know this stock was listed in the face of the note as collateral security on the note, didn't you?

A. I never did see it.

Q. Didn't you read the note?

A. I never seen it; no, this is the first note I seen.

Q. When you renewed that note you saw him tear your signature off of that first note?

A. Yes, sir, but I didn't read it.

Q. And you signed a new note then? A. Yes, sir.

Q. And wasn't it listed as collateral security in the face of that note?

A. No, every note was blank, only the first one when I signed it, Bob.

Q. I will ask you to examine Government's Exhibit 25, and state if each one of these notes that were signed by you didn't have listed in it on the face of the note, 432 shares of Sinclair oil stock?

A. Any note that I signed after that first note was just a blank note; there never was nothing written on it.

Q. Oh, you just signed a blank note and turned it over to Lloyd Lewis; is that it? A. That is it.

Q. Now, this stock in the Sinclair Oil Company was turned over to the Security National Bank when it purchased the assets of the Liberty National Bank as collateral behind this note of yours, wasn't it? A. Yes, sir.

Q. The Security National Bank got that stock?

A. Yes, sir.

Q. Now, Jim, this property at 1821 South Cheyenne in Tulsa which is listed here as having an equity of $15,000.00, which one of the pieces of property now is that, as to the value that you put on it a while ago?

A. Well, that is the one I thought was worth $15,000.00 or $16,000.00.

Q. And the property at 217 East Eighteenth Street?

A. Well, that is the one—that is the one I thought was worth $15,000.00.

Q. What about the property at 1821 South Cheyenne?

A. Well, that is the one I give $10,000.00 for, and done some work on if, and I thought was worth about $12,000.00.

Q. Then these lots at Fifteenth and Lewis Streets in Tulsa, listed at $30,000.00, what do you say that is worth?

A. Well, I give $40,000.00 for it that spring.

Q. Now, Jim, these thirteen lots on Lewis and Fifteenth Street is in a section of the city which was growing rapidly in value at that time, wasn't it? A. Yes, sir.

Q. And did increase remarkably in value, didn't it?

A. Yes, sir.

Q. And you put some improvements on that property, too, didn't you? A. Yes, sir.

Q. Jim, this note of yours to the Security National Bank has been paid, hasn't it? A. Yes, sir.

Q. Jim, the $13,500.00 that you say was against one of these peices of property, was that for money borrowed on one property? A. Yes, sir.

Q. And was it secured by a mortgage on the property?

A. Yes, sir.

Q. Which one of these pieces of property is it now that was on?

A. That is on the East Eighteenth Street property.

Q. That is at 317 East Eighteenth Street? A. Yes, sir.

Q. Now, all the money of the proceeds of the note that you gave the Security National Bank went to pay for the Sinclair Oil Company stock? A. How is that?

Q. All the money of the proceeds of the note that you made to the Security National Bank, to the Liberty National Bank, went to pay for the Sinclair Oil Company stock?

A. I think so.

Q. I think that is all. It all went to your account, too, didn't it? A. Yes, sir, it was all put to my note.

Q. And then it was checked out by you and your checks returned to you, weren't they, Jim?

A. Yes, sir, but I didn't sign the checks.

Q. Well, you knew somebody else signed them for you?

A. Yes, sir, I knew they were signed.

Q. Who signed them, Jim?

A. Well, that big check was signed on a typewriter; I don't know who signed it.

Q. Somebody there in the bank signed your name to it?

A. Yes, sir.

Q. Mr. Lamprich frequently signed your name to checks in there? A. Yes, sir.

Q. And he had authority to do that for you?

A. Yes, sir. Sometimes I would call up and tell him.

Q. You got your checks all back, did you? A. Yes, sir.

Q. And you never made any complaint to the bank about anybody signing your name to them, did you? A. No, sir.

Q. These checks for these stocks were made payable to Houston-Fible & Company, brokers? A. Yes, sir.

Q. And you got them back as your cancelled checks in the regular course of business?

A. Yes, sir, I got this one for $12,500.00, but I never got one for that other check that is on there.

Q. Well, Jim, don't you know that the other note of your brother's was combined or all of it put in this note of yours?

A. Must have been; his stock was in there with mine.

Q. Well, didn't you know that? A. No, how did I know it?

Q. You found it out since then?

A. Yes, sir, I found it out down at the Security.

Q. His note was put into yours, and the stock behind his note was put up with your note, wasn't it, and that is the way it showed up at the Security National Bank? A. Yes, sir.

Mr. Davidson: That is all.

Redirect Examination by Mr. Dodds.

Q. You paid the note in some way or the other?

A. Yes, sir.

Q. How did you pay it?

A. I turned this stock over to them and I had this other property in Maple Ridge and they had a mortgage on it for $7,500.00, and I turned that property over to them and the stock and got my note.

Q. You lost the property and the stock and that is how you came out on the transaction, is it?

A. Yes, that is how I came out, yes, sir.

Mr. Dodds: That is all.

Recross Examination by Mr. Davidson.

Q. This $7,500.00 that you refer to was money that you had borrowed yourself, wasn't it?

A. Yes, sir. I borrowed it from the Liberty National Bank.

Mr. Davidson: That is all.

The Court: Stand down.

(Witness excused.)

SIMON W. KNOTEN.

called as a witness on behalf of the Government, and being first duly smorn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Knoten, you are a resident of Tulsa? A. Yes, sir.

Q. And in the grocery business over there? A. Yes, sir.

Q. And have been for several years last past? A. Yes, sir.

Q. And during the year 1923 you were in the grocery business? A. Yes, sir.

Q. And had occasion to do business with the Liberty National Bank of Tulsa in which the two defendants here were president and vice-president? A. Yes, sir.

Q. Mr. Knoten, I show you Government's Exhibit No. 24, and ask you whether that is your signature to that note?

A. Yes, sir.

Q. Government's Exhibit No. 24 being already introduced, and a note in the sum of $17,500.00 is signed by the witness Simon W. Knoten, note No. 20190. Now, Mr. Knoten, state to the jury just as briefly as you can, how you came to make that note for $17,500.00 in June, 1923; that would be about four or five months before the bank closed?

Mr. Davidson: Each of the defendants object to the

question upon the same grounds and for the same reasons assigned to the testimony of John T. Kramer with reference to the Kramer transaction.

The Court: Very well, the same ruling.

Mr. Davidson: Note an exception. And now may we have an objection to each question asked this witness pertaining to this transaction and the same exception?

The Court: Yes. You may proceed.

A. Mr. Lewis called me to his office, A. E. Lewis, and he had a number of papers on his desk and he had me sign several papers, and among them I signed this $17,500.00 note, and he also had a cashier's check for $2,500.00 made payable to me, that I endorsed and laid back on the desk and the $2,500.00, and there was a $15,000.00 note, these two notes, the $17,500.00 note was for the $15,000.00 note and the $2,500.00 cashier's check.

Q. You mean this $17,500.00 note was a renewal of an older note for $15,000.00 plus the $2,500.00 represented in the cashiers' check which will be the Government's next exhibit?

A. Yes, sir.

Q. Is that the case? A. Yes, sir.

Q. Is this the cashier's check you are speaking about?

A. Yes, sir.

Q. Well, you had executed another note for the sum of $15,000.00 a little while before, had you not? A. Yes, sir.

Q. How long before, approximately?

A. That was December 16, 1922.

Q. And then in June, 1923, you made the note raising the amount to $17,500.00? A. Yes, sir.

Q. Now, Mr. Knoten, what was the original note made for in December previous?

A. It was made to carry some stock that was supposed to be Bill Smith stock and I was to carry it for thirty or sixty days until Mr. Lewis could take it back.

Q. Which Lewis? A. A. E. Lewis.

Q. And why were you doing that? What interest had you in helping Lewis to carry that stock?

A. I had no interest in it, none other than he just asked me if I would carry the stock for him for that length of time, and I told him I would, but I wanted to be sure it wasn't going to be laid on me because I didn't want no stock; I couldn't buy no stock or couldn't afford to carry it.

Q. Then when you came back in the following June to renew that note it was raised to $17,500.00, you say? A. Yes, sir.

Q. Now, do you know why it was raised to that amount in June? A. No, I don't.

Q. I ask you whether you had any other matter pending with the bank that tended to explain to your account why it was raised to $17,500.00, or why that cashier's check was made? A. No, not that I recall.

Q. Who made the cashier's check, at whose instance and request; did you ask to have it made? A. No, sir.

Q. Was the cashier's check explained to you at the time?

A. Well at the time it was not explained at all.

Q. Now, did you come to endorse it?

A. He just handed it to me, and he says, "Here is a cashier's check I want you to endorse," and I just endorsed it and handed it back; that is, laid it on the desk with the rest of the papers.

Q. Now, did you have any understanding at that time that you were giving him $2,500.00 more money? A. No, sir.

Q. That is the exhibit you have there in front of you?

A. Yes, sir.

Q. Now, what became of the check after you endorsed it there? A. I don't know.

Q. Did you get it? A. No, sir.

Q. I ask you whether or not you asked for any further explanation of that transaction? A. I did.

Q. How did you come to do that?

A. Well, I just got to thinking about it. Just at the time I didn't pay much attention to it, and it was rather late, about three or after, and I just done as he wanted me to do, and then after I left the bank I got to thinking about it; thought, "Well, I don't understand that," and I went back there the next day to find out and get some explanation about it and he just told me I didn't have to know anything about it, he was taking care of it for me; he always did take care of business for me, and I never worried very much over it.

Q And I ask you now whether you have since paid this note for $17,500.00? A. Yes, sir.

Q. To whom did you pay it?

A. The Security National Bank.

Q. What financial condition were you in at the time you made that $17,500.00 note? A. I was in very good shape.

Q. Are you a married man? A. Yes, sir.

Q. Wife and how many children? A. Seven children.

Mr. Davidson: We object to that; how many children he has doesn't make any difference in this case.

The Court: No, that doesn't make and difference.

Q. You had this grocery business over there? A. Yes, sir.

Q. And I ask you how and in what manner you paid this $17,500.00 note?

A. I had to sell nearly everything I had.

Mr. Davidson: We object to what manner he paid it. He testified he paid it, and that ought to be the end of it.

Mr. Dodds: I just wanted to show the good faith and the intention of the parties here and to show that they wiped this man out; that is good evidence.

Mr. Williams: I object to that and ask the court to instruct the jury not to consider the statements of counsel.

The Court: Well, now, I suppose that he paid it. The proper time to think about those things is when he signed it.

Q. Very well. Had your business dealings been such with the Lewises up to that time so as to gain your confidence in them? A. Yes, sir.

Q. You had no reason to suspect them at all?

A. None whatever.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Was Lloyd Lewis there at the time this transaction took place at the bank?

A. He was at the bank, but he wasn't in A. E. Lewis' office that I know of.

Q. Was he there at the time this $17,500.00 note was made? A. Where?

Q. In the bank, present during the transaction?

A. No, not that I knew of.

Q. Did he have anything to say to you about it?

A. No, sir, not that I recall.

Q. Did he participate in the transaction at all?

A. No, sir.

Q. You testified in the trial of the other cases at Muskogee, didn't you, Mr. Knoten? A. Yes, sir.

Q. I will ask you if on that trial this question wasn't asked you and this answer made to it: "Q. Now, at the time you executed the $17,500.00 note, being Government's Exhibit 46, what was the circumstances under which you executed this $17,500.00 note" and your answer was: "Well, $15,000.00 of it was to renew this other note and $2,500.00 I just never did get that straight what it was for at all." Did you make that answer? A. Yes, sir.

Mr. Dodds: If you honor please, that is exactly what the witness says here.

Q. Wasn't this question asked you: "Did you get the

$2,500.00 difference" and your answer was "No, sir?" You made that answer, didn't you? A. Yes, sir.

Q. Wasn't this question then asked you: "I ask you whether the cashier's check payable to you, being Government's Exhibit 48 and endorsed by you, wasn't actually given to you," and your answer was: "Yes, sir." A. Yes, sir.

Q. Then wasn't this question asked you: "That was given to you, how did it come that you endorsed that back again?" and your answer was: "Mr. Lloyd requested me to endorse it;" wasn't that your answer to that question on the other trial?

A. Well, if I said Mr. Lloyd, it was A. E. Lewis. I was referring to Allie Lewis, and if Lloyd's name got in there, it either got in there through error or misprint or something, because Lloyd never talked anything to me at all.

Q. All right, now, that the original transaction when you executed the $15,000.00 note you got for that note stock in the Liberty National Bank, didn't you? A. Yes, sir.

Q. Seventy-five shares, wasn't it? A. Yes, sir.

Q. That stock was issued to you on that day wasn't it? A. Yes, sir.

Q. And you endorsed that stock on the back of it, didn't you? A. Yes, sir.

Q. And put it up with the bank as additional collateral security on your note, didn't you? A. Yes, sir.

Q. And that stock remained there until the Security National Bank took it over, didn't it? A. Yes, sir.

Q. Now, you also gave the bank a financial statement, didn't you, Mr. Knoten? A. Yes, sir.

Q. Which showed a net worth of some $60,000.00, wasn't it?

A. I believe that is what they had on it after we got it into the evidence, but I don't know that those are the correct figures.

Q. That financial statement showed a net worth of $58,691.96, didn't it? A. Yes, sir.

Q. You signed and delivered that statement to the bank, didn't you? A. Yes, sir.

Q. Now, I hand you Defendant's Exhibit No. 17, and ask you to examine it and state whether or not that is the certificate of stock of the Liberty National Bank that you received for the $15,000.00 note that you made in December, 1922?

A. Yes, sir.

Q. I will ask you to examine the back of it and see whether or not that is your endorsement on it? A. Yes, sir.

Q. Now, when this transaction occurred in which you

made this $17,500.00 note to the bank, the $15,000.00 note was cancelled and returned to you, wasn't it?

A. No, it was tore up.

Q. Torn up in your presence? A. Yes, sir.

Q. And you signed the note for $17,500.00? A. Yes, sir.

Q. And you at the same time endorsed the cashier's check which had been made payable to your order? A. Yes, sir.

Q. And delivered that back to A. E. Lewis, didn't you? A. Yes, sir.

Q. And at the same time you received from A. E. Lewis his personal note for $2,500.00, didn't you?

A. No, I didn't receive it at that time.

Q. It was there on the table with some other papers, wasn't it?

A. Yes, sir, I saw it there, but I didn't know what it meant.

Q. And you had it put in safe-keeping in the bank, didn't you? A. I didn't have it put there, it was put there.

Q. You got it from the Security National Bank after it took over the Liberty, didn't you? A. Yes, sir.

Mr. Davidson: If your honor please, there are a lot of these exhibits that have disappeared.

Mr. Dodds: I might have explained to the court that there is a bankruptcy proceeding and some of the parties have withdrawn their various papers who have claims against these defendants, and possibly those may be the papers you are looking for, but I think receipts have been taken by the reporter in each instance.

Q. Have you gotten that $2,500.00 note from the court reporter? A. No, I didn't get it.

Q. Do you know whether anybody else got it?

A. I am not positive, but it is my understanding someone either got the note or got a duplicate of it, or something.

Q. Who is your lawyer? A. Stringer.

Q. Do you know whether he got it or not?

A. I don't know positively.

Q. Did he file a claim in bankruptcy for you? A. Yes, sir.

Q. That was a note for $2,500.00 payable to your order signed by A. E. Lewis, and dated the same day as this $17,500.00 note, wasn't it? A. Yes, sir.

Q. Now, you say that you didn't understand that transaction? A. No, sir, I didn't.

Q. You knew you were signing a note for $17,500.00, didn't you, to the Liberty National Bank? A. Yes, sir.

Q. You know you were endorsing a cashier's check which has been made payable to your order, didn't you? A. Yes, sir.

Q. You knew you were getting a note from A. E. Lewis or $2,500.00 payable to you individually, didn't you?

A. Well, no, not at that particular time, I didn't know, when I endorsed this note, I didn't know what I was going to get.

Q. What did you think that $2,500.00 note payable to your order by A. E. Lewis was for?

A. I couldn't imagaine at that time.

Q. You signed these papers without asking any questions what they were for?

A. I always signed papers when he asked me to sign them about matters of business and never questioned him about them.

Q. You did come back the next day and question him?

A. Yes, sir, and he told me he was taking care of it, to go on and forget about it.

Q. You know the $15,000.00 was for the old note?

A. Yes, sir.

Q. The only thing you didn't understand was the $2,500.00? A. Yes, sir, the $2,500.00 transaction.

Mr. Davidson: I think that is all, if your honor please.

Redirect Examination by Mr. Dodds.

Q. Mr. Knoten, you never signed a financial statement at that time, did you?

A. I can't recall, I signed a number of statements at the bank, and I just don't recall when I did and when I didn't. I don't believe I signed that one.

Q. Do you know of making any statement later than July, 17, 1922, that was just before——

A. There might have been another statement made, I can't recall; I just can't recall whether I made another one or not after that.

Mr. Dodds: That is all.

Recross Examination by Mr. Davidson.

Q. As a matter of fact, you made several financial statements to the bank? A. Yes, sir, I made them quite frequently.

Q. Borrowed money from time to time yourself there at the bank? A. Yes, sir.

Q. You transacted your banking business there?

A. Yes, sir, every bit of it.

Q. And you kept a financial statement on file all the time?

A. Yes, sir.

Q. And A. E. Lewis and W. L. Lewis well knew of your financial condition, didn't they? A. Yes, sir, I think they did.

Mr. Davidson: Now, if your honor please, I want to offer Defendants' Exhibit 17 in evidence.

The Court: Very well.

Mr. Dodds: Did you know the financial condition of the bank at the time you bought that stock as it later developed?

A. No, sir.

Mr. Dodds: Was the stock any good?

A. Not worth a penny.

Mr. Dodds: That is all.

Mr. Davidson: You owned other stock in the bank at the time you bought those seventy-five shares, didn't you?

A. Yes, sir.

Mr. Dodds: How much did you own?

A. Twenty shares.

Mr. Dodds: That wasn't worth anything either, was it?

A. No, sir.

Mr. Davidson: Did you give A. E. Lewis a check for $15,000.00 on your bank account for this stock?

A. Yes, sir, he had it already made out and had it all ready for me to sign just like he did everything else, just the minute you hit there to sign it, and that was all there was to it.

Mr. Davidson: And the proceeds of that $15,000.00 note was placed to your account in the bank?

A. Yes, sir.

Mr. Davidson: And then you drew your check to A. E. Lewis for $15,000.00 for that stock?

A. Yes, sir.

Mr. Davidson: That is all.

(Witness excused.)

The Court: Gentlemen of the jury, I am about to take a recess of the court until 2:00 o'clock this afternoon. Pass out and return at that time.

(Thereupon court took a recess until 2:00 o'clock p.m.)

2:00 o'clock p.m., parties present as upon adjournment.

ourt reconvened, and the following proceedings were had, o-wit:

The Court: Proceed with the trial.

C. F. POWELL

vas called as a witness on behalf of the Government, and aving been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Powell, you live at Tulsa at the present time, do ou not? A. Yes, sir.

Q. Moved there from New York City some time ago—ow long ago? A. In May of this year—last year.

Q. Your business is what?

A. Engineering, and valuation.

Q. In connection with the oil industry, it is not?

A. Yes, sir.

Q. Before you moved to Tulsa, to reside, you were back and forth there from New York continually, were you not? A. Yes, sir.

Q. And did a good deal of business in Tulsa, and that vicinity? A. Yes, sir.

Q. During the year 1923, Mr. Powell, did you have occasion to have some kind of business transaction with the Liberty National Bank of Tulsa? A. Yes, sir.

Q. And you have a note—have you the note? A. Yes, sir.

Q. That you executed to the bank. I show you Government's Exhibit No. 48, Mr. Powell, and ask you if that is your signature thereon. A. Yes, sir.

Q. And it is a note to the Liberty National Bank of Tulsa, made by you on May 21, 1923? A. Yes, sir.

Mr. Dodds: Government's Exhibit No. 48 is offered in evidence.

Q. I show you Government's Exhibit No. 49, Mr. Powell, and ask you if it bears your endorsement? A. It does.

Q. And ask you if that is not a check made by you at approximately the same time this note was made for $24,-395, in favor of the Liberty National Bank on Metals—Mechanics and Metals National Bank of New York; is that the case? A. That was a draft.

Q. Draft, yes. A. Deposited.

Q. Yes, I miscalled it; a draft, instead of a check. Was that in connection with this—connected with the sum of money represented in the note, the last exhibit? A. Yes, sir.

Mr. Dodds: Government's Exhibit No. 49 is also offered in evidence.

Mr. Davidson: The defendants object to each of these exhibits, which are Government's Exhibits Nos. 48 and 49, for the reason that they have no material bearing on any issue in this case, and do not prove or tend to prove any material fact or circumstance in this case.

The Court: Well, the nature of the transaction has not yet been explained; so far as appears now, that is probably true, but an explanation may——

Mr. Dodds: We will connect it up.

Mr. Davidson: And we—did your honor rule on that?

The Court: Yes, I will make the same ruling on that as I did in the other matter.

Mr. Davidson: Note an exception. And we want now to interpose an objection to this witness' testimony as to this transaction, on the grounds that it is not involved in any count of the indictment and does not prove or tend to prove any material fact or circumstance in the case, and can have no bearing upon the false entries made in the minute books, or in the report to the Comptroller of the Currency, which are confined and limited by the allegations of the indictment to three certain notes and that is not one of them.

Mr. Dodds: I call my brother's attention to the fact that this is a note No. 20,064, being one of the notes expressly named in 37 counts of the indictment.

The Court: Very well.

Mr. Davidson: Note an exception. May the record show our objection to each question asked this witness, and an exception saved?

The Court: Yes.

Mr. Dodds: I will say to the jury, Government's Exhibit No. 48 is a note in the sum of $25,000, payable ninety days after date, given to the Liberty National Bank of Tulsa, for $25,000, as I said, being note No. 20,064.

And Government's next Exhibit, 49, is a draft drawn by Mr. Powell, apparently, on the Mechanics and Metals National Bank of New York for the sum of $24,495, the same amount less $505.

Q. Mr. Powell, will you explain to the jury as quickly as you can the circumstances under which you made that note to the Liberty National Bank of Tulsa? A. In——

Mr. Dodds: Pardon me, one minute; I mis-spoke.

The accountant suggests that the draft was drawn by the Liberty National Bank on New York and not by you personally.

A. Yes.

Q. But in connection with that sum, just explain the note.

A. On the 18th day of May, 1923, I had arrived in Tulsa, and was called to Mr. A. E. Lewis' house over the telephone and at that time he stated that he had certain properties—that he already owned a half interest in, or said "they" owned a half interest in, and that he would like a little help in buying out his partner. After discussing it I promised to meet him in the bank at 10:00 o'clock on the next day, and when I arrived in the bank we chatted a few moments in regard to it and he explained it a little more fully, and I signed this note and deposited the proceeds in my bank, the Empire Trust, instead of the Metals.

Q. Yes.

A. The Empire Trust, in New York City, and gave Mr. Lewis my check for—two different checks for the amount. That part was made at his suggestion.

Q. Now, Mr. Powell, I ask you whether—then the money came back from your Empire Trust account through the Mechanics & Metals Bank, or whatever that is, back into your account, at Tulsa, or back to their order at Tulsa?

A. Back to their order at Tulsa.

Q. So they got the money, less $505, which is probably interest on the amount? A. Interest on the amount, yes.

Q. For ninety days? A. Yes, sir.

Q. Now, I will ask you whether you found out, within a short time thereafter, that the deal for which you had put up the money did not go through or was not going through?

A. Well, I—on the 19th I went over to Enid, and I believe it was the 21st I came back and was on my way to Washington and stopped in after I had lunch at about five or ten minutes to the time the train left, it was in the middle of the day—I think it was 1:00 o'clock or 12:00 o'clock at that time—and met Mr. Lewis in front of the bank and asked him if the deal had gone through, and he said "I guess there is nothing doing," or something to that extent.

Q. And what conversation did you have with him then, or what instructions did you give him as to the use of your money in case the deal was not going through?

A. Well, we were standing there with another party right by my side, and I said, "Just give credit on those notes and we will fix it up later."

Q. That is, you told him to credit you with the——

A. With the checks.

Q. With the checks and thus kill the obligation as far as you were concerned? A. That is what I meant by it, yes.

Q. Do you know whether that was done or not?

A. Evidently it was not—yes.

Q. It was not done? A. No.

Q. Do you know what became of the money? A. No.

Q. Did you ever have any talk with the defendant, Allie Lewis, afterward about what became of the money?

A. Yes sir.

Q. What was that conversation?

A. It was down at his house and he stated that they had, was awful sorry it ever happened, very apologetic and said that it simply come on him and he had to use all his money, spoke about different ones, to save his stock, something to that effect.

Q. Did he tell you any particular reason why he had taken your money to do it? A. No, not as I remember.

Q. Did he make any comment to you at that time, indicating whether he had done it wrongfully or not?

Mr. Davidson: If your honor please, we object to that as leading.

The Court: It may be a little leading.

Q. What comment did he make to you?

A. He said I ought to take a gun and shoot him. Of course there was a great deal of conversation that went on at that time but I don't know verbatim what was said.

Q. Have you ever since been reimbursed, or your position changed in this matter by anything the Lewises have done since that time? A. No, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Powell, how long have you known A. E. Lewis and W. L. Lewis?

A. Between twenty-five and twenty-six years.

Q. Where did you first become acquainted with them?

A. Stillwater, Oklahoma.

Q. That was when you and they were boys together, was it?

A. Well, I think I was about twenty-two when I met them. Allie and Lloyd was quite a small boy, Allie was a pretty good sized young man at that time.

Q. And in the meantime you had become an engineer and was located in New York City? A. Yes, sir.

Q. You frequently came to Tulsa in connection with your business affairs, did you not, Mr. Powell? A. Yes, sir.

Q. Now, at the time of this transaction which occurred, I believe in May, 1923—— A. May 19, 1923.

Q. Was that the date of the original transaction?

A. I think that was the date of the original transaction, is my memory at the present time.

Q. You made your note to the Liberty National Bank for $25,000.00? A. Yes, sir.

Q. And out of that they took the interest for a period of time that the note was made for, didn't they?

A. Ninety days, yes, sir.

Q. And the stamps on the note amounting to $505.00, wasn't it? A. $10.00 stamps.

Q. Well, the $505.00 was the amount retained by the bank at that time, wasn't it? A. Yes, sir.

Q. And they gave you a draft? A. Gave me a draft.

Q. On the Mechanics & Metals Bank in New Your City?

A. Yes, sir.

Q. For the difference of $24,000.00 and some dollars, $495.00, wasn't it? A. Yes, sir.

Q. You forwarded that draft and wrote a letter to your secretary in New York? A. Yes, sir.

Q. With directions to deposit to your credit in the Empire Trust Company, didn't you? A. Yes, sir.

Q. And that was done, wasn't it? A. Yes, sir.

Q. Now, at the time you got the draft from the bank, you gave A. E. Lewis two checks? A. Yes, sir.

Q. On the Empire Trust Company in New York?

A. Yes, sir.

Q. One for $20,000.00 and one for $4,495, is that it?

A. Yes, sir.

Q. Those checks were cashed by your bank in New York, weren't they? A. Yes, sir.

Q. Now, have you those checks? A. Yes, sir.

Q. Let me have them, will you please.

Mr. Davidson: We will ask the reporter to mark the checks produced as Defendant's Exhibits No. 50 and 51 respectively. The defendants offer these exhibits No. 50 and 51 in evidence, if your honor please.

The Court: Very well.

Mr. Davidson: I will not read the entire checks, but one is $20,000.00 payable to the order of A. E. Lewis, signed C. F. Powell and drawn on the Empire Trust Company of New York City, and the other one is for $4,495.00 drawn on the Empire Trust Company of New York City signed by C. F. Powell.

Q. Now, Mr. Powell, you gave the bank at that time a letter as to your net financial worth at that time, did you?

A. Yes, sir.

Q. What was your net worth as represented to the bank by you in that letter?

Mr. Dodds: To save time, if your honor please, we concede the defendant then was and now is solvent in every respect, and worth more than the amount of the obligation.

The Court: Very well.

Mr. Davidson: We want to show what was done by these defendants.

The Court: It is not the complaint about the solvency.

Mr. Davidson: Yes, your honor, but sometimes these things are prejudicial and if the real facts are known.

Mr. Dodds: I think we can agree here.

Mr. Davidson: Let's stipulate this: At the time the $25,000.00 note was made to the Liberty National Bank Mr. Powell gave the bank a letter in which he represented that he was worth over and above all his debts and liabilities the sum of $150,000.00.

Mr. Dodds: That is the case, isn't it, Mr. Powell?

A. Yes, sir.

Mr. Dodds: That is absolutely true.

Mr. Davidson: And that he said in that letter he would furnish them a detailed takeoff of his balance sheet later.

Mr. Dodds: That is true.

Mr. Davidson: And thereafter he did upon request by letter from the bank furnish a balance sheet as of March 31, 1923, showing a net worth of $253,258.10.

Mr. Dodds: That is true and the statement is undoubtedly correct.

Mr. Davidson: And that was his actual net worth at that time.

Mr. Dodds: Absolutely so.

The Court: All right.

Q. Now, you say you went on from there to some place in a few days? A. Went to Washington.

Q. And within a few days after this note was made?

A. Yes, sir, I think I went immediately.

Q. When was this conversation you had with A. E. Lewis in which you say you told him to apply these checks on your note? A. That was the day I left.

Q. And how long was that after the note was made?

A. Two or three days. The note I think was dated ahead, because the deal would not be consummated, but I think I got back by the time this note was made. That was on the 21st, but the whole thing was signed up on the 19th.

Q. Now, I will ask you if you didn't in the month of July, 1923, receive a letter from A. E. Lewis requesting you or reminding you of the fact that you hadn't filed your balance sheet with the bank?

A. My memory is that letter was received long before that

Q. I will ask you if you didn't write a letter to Mr. Lewis under date of July 14, 1923, in regard to the matter?

A. I don't remember that I did.

Q. I hand you a photostatic copy of a letter, Mr. Powell, and ask you to examine that and state if that is your signature? A. This is the original letter.

Q. Is that your signature? Is that the original letter?

A. Yes, sir, I guess it is.

Q. You wrote that letter and sent it to Mr. Lewis

A. No, I didn't write it myself, my secretary wrote it.

Q. You signed it, didn't you Mr. Powell?

A. I believe I did, yes, sir.

Mr. Davidson: We will ask the letter to be marked for identification as Defendant's Exhibit No. 52.

Mr. Dodds: No objection to it being introduced in evidence right now.

Mr. Davidson: I will ask Mr. Dodds to please let me introduce my evidence in the way I think best.

Mr. Dodds: I was only making the suggestion in order to save time.

The Court: Proceed.

Mr. Davidson: I will read the letter to the jury.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 52 to the jury.)

Q. Now, at that time, you were still furnishing financial statements on that note you had made to the bank, weren't you? A. No, not on that note.

Q. What were you furnishing that for?

A. I think that letter was written a long time before that.

Q. Written a long time before July 14th? A. Yes, sir.

Q. How did it happen to be dated then July 14th?

A. I don't know; if you have got the original, I think I can show you.

Q. I thought you said that was the original.

A. It looks like the original, but that is a photostatic copy.

Q. You had the original, did you not? Now, Mr. Powell, this note that you made to the bank has been paid, has it not?

A. Part of it only.

Q. How much of it?

A. Interest and principal, about $9,000.00.

Q. You have renewed the note to the Security National Bank? A. I am suing them for the return of it.

Q. You are suing them for the return of it, are you?

A. Yes, sir.

Q. Mr. Powell, you received a note from A. E. Lewis and W. L. Lewis for $25,000.00 the same day you made that note to the Liberty National Bank, didn't you? A. Yes, sir.

Q. Have you that note with you? A. Yes, sir.

Q. You got it from the reporter here did you not? A. No.

Q. It was offered in evidence on the other trial, wasn't it?

A. Yes, sir. You had it, I returned it to Mr. Lewis. I have never had it in my possession, it was left in the bank in a safety deposit box under my name, and when the bank was transferred I come down from New York City and went with another man and got the note out and returned it to Mr. Lewis.

Q. Have you or your attorney gotten that exhibit from the court reporter since the trial at Muskogee?

A. Not that I know of.

Q. Have you presented a claim in the bankruptcy court?

A. No, sir.

Q. When did you bring your suit to recover back the money you paid the Security National Bank?

A. Sixty days ago. I made a demand and they sued on the note.

A. I made a demand and they sued on the note.

Mr. Davidson: Oh, they sued on the note?

A. Yes.

Q. You have not brought any suit?

A. I made a demand, and my attorneys made a demand for the return of the money and the note and they sued on it.

Q. After the Security National Bank took over the Liberty, you gave the Security National Bank a new note, didn't you, Mr. Powell? A. Yes, sir.

Q. And that is the one that the Security National Bank sued on? A. Yes, sir.

Mr. Davidson: All right, I believe that is all, if your honor please.

Redirect Examination by Mr. Dodds.

Q. Mr. Powell, looking at this photostatic copy here, you said something about the date that that letter was written; what have you to say about that?

A. Well, we had been in several deals—that is, we had talked over several deals, and I remember very distinctly of leaving orders in my office there, by phone—or by word of mouth, for Bauer to get out one. That was my signature, and it was made of March 1st, 1923, and I think it was forwarded to them immediately.

Q. Now, do you know where the original letter, of which this is—— A. No, I don't.

Q. Went? A. No, I don't.

Q. Well, that would be mailed to them, wouldn't it?

A. I presume so.

Q. Yes. You don't know what has become of it?

A. No, sir.

The Court: Stand down.

Mr. Davidson: Just a moment, if your honor please.

Cross Examination by Mr. Davidson.

Q. The original letter of which that was a copy was introduced as an exhibit on one of the other trials, was it not, Mr. Powell? A. No, I don't know.

Q. Didn't you see the original letter on the other trial?

A. No, I don't remember that I did.

Mr. Davidson: Well, if your honor please, we may want to recall this witness when we get these exhibits sorted out here.

The Court: Very well, stand down for the present.

Mr. Dodds: That is all for the present, your honor.

Mr. Davidson: Just a moment, if your honor please.

The Court: Have you the original letter there?

Mr. Davidson: Yes, sir.

Mr. Dodds: That document is not the original letter.

Mr. Davidson: No, we have a receipt here, if your honor please, showing the Defendants' Exhibit No. 29 in the other case, letter dated July 14, 1923, signed C. F. Powell and addressed to A. E. Lewis——

Mr. Dodds: I call my brother's attention to the fact,

though, that the receipt he is reading is not the receipt for this letter.

Mr. Davidson: Yes it is.

Mr. Dodds: No, this is Exhibit No. 52 in this case, and no exhibit number in the other case, and had to do with the financial statement, as I understand it.

Mr. Davidson: Well, this is a copy—photostatic copy of this exhibit here. The original letter is marked as Defendants' Exhibit No. 27.

The Court: It may have been that you had the photostatic copy then and not the original; the witness has no remembrance of the original. Who has these exhibits?

Mr. Davidson: If your honor please, the attorney for Mr. Powell has given a receipt here to the reporter of the court in which he has withdrawn these exhibits. We supposed that they were in the possession of the reporter of the court here, and asked that they be brought down here, and we came here and find——

The Court: I know, but it is very easy to get this party here with this, if you need him.

The Witness: There is another letter, possibly I might explain; we withdrew another letter we had there, and here it is, the only letter. There are two notes.

Mr. Dodds: It is not the letter mentioned in this receipt.

The Witness: A note and two checks, and that was what was got.

The Court: Well, where is this lawyer with these exhibits?

The Witness: I think we can get him at Guthrie, today, federal court at Guthrie today.

The Court: You could easily have him subpoenaed to produce these. He can be here before Monday.

Mr. Davidson: We would like to have him here, if your honor please.

The Court: Very well. Direct the clerk to subpoena him, a subpoena duces tecum, to bring these instruments, and he will bring them if he has them.

Mr. Davidson: All right.

Q. What is your lawyer's name that has got them?
A. Springer.
Q. Springer—J. M. Springer, isn't it? A. J. M. Springer.

Mr. Dodds: I say for counsel's information, I don't

think that lawyer has it. I think some court reporter up at Tulsa has them, if I am not mistaken.

Mr. Davidson: Well, he can get them. These exhibits ought not to have been permitted to leave this court.

Mr. Dodds: If your honor please, these are not exhibits in this case. Counsel knew all about all of these matters and never subpoenaed them duces tecum here. The Government brought everything it wanted and everything they could think of that they wanted.

The Court: Very well, I cannot settle this now.

Mr. Davidson: That is all for this witness. We will want to recall him, however.

The Court: Stand down.

Mr. Dodds: That is all, Mr. Powell.

WILLIAM O. BOHNEFELD

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. You are a resident of Tulsa? A. Yes, sir.

Q. You have a dyeing and dry-cleaning establishment over there? A. Yes, sir.

Q. Lived there and been in business for a number of years? A. Yes, sir.

Q. You had occasion during the year 1923 to deal with the Liberty National Bank at Tulsa? A. Yes, sir.

Mr. Davidson: If your honor please—will you wait just a moment? My co-counsel has called my attention that they do not know whether I made objection on Mr. Powell's testimony, the same objection as I did to the others.

The Court: You did.

Mr. Davidson: I thought so, myself.

The Court: I said "Same ruling."

Mr. Davidson: We want to make the same objection to Mr. Bohnefeld's testimony on the same grounds, and have the same exception; have the same objection and exception made to each question asked him.

The Court: Very well, proceed.

By Mr. Dodds:

Q. Mr. Bohnefeld, when you had business to do with the

Liberty National Bank of Tulsa, during the year 1923, did you have occasion to do it with the defendants, or either of them, here? A. Yes, sir.

Q. Which one? A. W. L. and A. E. Lewis.

Q. Both of them? A. Yes, sir.

Q. Now, Mr. Bonhefeld, I hand you Government's Exhibit No. 27, being a note in the sum of ten thousand dollars, signed by your name, W. O. Bohnefeld; is it your signature?

A. Yes, sir.

Q. You made that note? A. Yes, sir.

Q. Tell the jury, just a shortly as you can, what the circumstances were under which you made that note?

A. Well, on the day that I made that note, W. L. Lewis called me up at my office and told me that he had a little matter he would like to talk over with me, and for me to step in at the bank at my first convenience. So a short while after that I went to the bank and he invited me into his office and after I was seated he said, "Bohnefeld, you know we have always accommodated you in every way that we could and loaned you money whenever you wanted it and took care of your account to suit your needs and conveniences, just as we are doing with your $11,500 note now, and so we, A. E. and I, just thought that you might be willing to reciprocate that favor, and especially if it would not obligate you in any way at all." Well, I asked him what the proposition was and he said, "Well, we have an option on a very valuable oil holding, for which we have been offered the sum of $30,000, but which we are reluctant to take, for the reason that it is worth a lot more money, but the bank is pretty well loaned up on its surplus now, and so we just thought if we could get you to sign a note to the Liberty National Bank for $10,000, which would enable us to exercise that option and dispose of it at our leisure to better advantage, why it would be a great favor and would—we would appreciate it very much, and besides, since you are a stockholder in the bank, why, whatever success the bank would attain through the transaction of course would be to our mutual benefit." And I said, "Well, I very much appreciate the fact that you have been mighty nice to me and appreciate all the accommodations that you have extended, but I also realize that I now owe this $11,500 note and which I have been unable to pay, it having been necessary for me to have it extended from time to time, and as business conditions are pretty slow I sure don't want to do anything to obligate myself any further." Well, he assured me that I would not be obligated at all to ever pay that note, that if I would sign it why I—it would be subject to my call at any time, I could come in and get it at any time and they

would replace it with other paper. Well, I still hesitated, and finally W. L. Lewis said, "Well, Bohnefeld, if you still have a hesitancy in signing that note," he says, "I will tell you what we would be willing to do." He says, "If you will sign a note to the Liberty National Bank for $10,000, in order that that option may be exercised, A. E. and I will sign a note jointly in your favor for the same amount, but with the understanding that this note which we will execute to you would not be binding upon us, that we not be called upon to pay it, any interest on it, and neither would you be obligated on the note that you would sign, and this note that we would give you would be exchangeable for the note that you might sign to the bank at any time, whether it be one day, or two days or three days or thirty minutes, or any time at all, if at any time that you want to—your note, all you will have to do is just bring the note in that we give you and we will give you your note." Well, I still hesitated and he finally said, "Well, now, Bohnefeld, if you still have a hesitancy in signing the note," he says, "perhaps you would like to have a financial sta'ement of myself and A. E." Well, I said, "I don't know as that is necessary, because I am under the impression that you are both quite wealthy, and besides, I figure any contract or agreement that you would make would be fully complied with by the bank." Well, he said, "Just to give you some idea of our financial standing," he says, "I will just state that A. E. owns his home, which is worth $135,000, and I own my home, which is worth $85,000, and we own the Mingo stock farm which we offered you recently for $50,000, and we own various other properties, and then, besides, you have heard of our success in the Bristow field." I said, "Yes, I have heard that you drilled in some pretty big wells over there." "Well, yes," he said, "we have drilled in wells over there that paid out in three days; in fact, we can qualify for over $800,000 each, and we owe very—our liabilities are very nominal, approximately $40,000," and he says, "Further, in order that no claim could come against our personal or banking interests, we carry in each other's favor the sum of $125,000 life insurance, payable to the other, in the event of death of one, which is more than ample to take care of any claim that could possibly come against us in the event of death." So, at about that stage in the game, A. E. Lewis entered the office and W. L. Lewis said, "Allie, I have just told Bohnefeld that if he would sign a note to the Liberty National Bank for ten thousand dollars that we would give him a note signed by us in the same amount, but with the understanding that he would never be called upon to pay his note, nor would we expect to be obligated to pay ours, or any interest; we would take

care of the interest on his note, and of course there would not be any on ours. And with the understanding, too, that if, at any time, that he wanted his note, all he would have to do would just be to bring this note in that we had signed and we would deliver his note back to him. Is that all right?" Allie said, "Yes, yes, that is all right." And then left the office.

Q. Now, Mr. Bohnefeld, were you ever called upon to pay any interest—pardon me, Mr. Juror—were you ever called upon to pay any interest on this note? A. No, sir, I never was.

Q. And were you ever called upon to pay the note between September 16th and the time the bank closed two months later, it was a ninety day note, it wasn't due until after the bank closed apparently.

A. No, sir, I wasn't called upon to pay it by the Liberty National Bank.

Q. Were you ever called upon to pay it by any one at all after it got into the hands of a third party, the Security Bank?

A. No, sir.

Q. And did you ever receive, Mr. Bohnefeld, any part of the $10,000.00 represented by this note yourself?

A. No, sir, I didn't.

Q. Haven't received any part of it up to date? A. No, sir.

Q. Now, Mr. Bohnefeld, at the time that you executed this note, was it right at the same time that the Lewises gave you a note back? A. Yes, sir.

Q. And where is that note now, if you know?

A. Well, I don't know.

Q. You haven't it? A. I haven't, no, sir.

Q. It has never been paid, anything ever been paid to you on that note? A. No, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Bohnefeld, this note which is Government's Exhibit No. 27, dated September 16, 1924, is not the original note that you made, is it? A. No, sir.

Q. This exhibit is a renewal of another note? A. Yes, sir.

Q. What is the date of the original transaction?

A. June 16, 1923.

Q. June 16, 1923, and that is the time these conversations took place, was it? A. Yes, sir.

Q. Now, a demand was made upon you to either pay or renew this note when it fell due, wasn't it?

A. Well, no, the renewal note was mailed to me while I was in California.

Q. The renewal note? A. Yes, sir.

Q. With the request you execute it?

A. The renewal note for that and also the $11,500.00 was mailed to me with just the request to please execute those two renewal notes and return at once in the self addressed stamped envelope.

Q. And you did that? A. Yes, sir.

Q. Now at the time of this original note, June 16, 1923, A. E. Lewis and W. L. Lewis gave you their individual note for $10,000.00, bearing the same date as that and payable to your order, did they not? A. Yes, sir.

Q. You produced that note on a former trial of these defendants, did you? A. Yes, sir.

Q. And it was introduced as an exhibit, wasn't it?

A. Yes, sir.

Q. Do you know whether or not your attorney has gotten that original note from the reporter?

A. No, it was my understanding from the stenographer over in Judge James' court, that Mr. LeBus has gotten all those papers.

Mr. Dodds: We can save some time on that. We agree that he gave the Lewises such a note and that the Lewises gave him a note for $10,000.00. Here is your note.

Q. I hand you a paper marked for identification defendants' exhibit No. 18 and ask you to examine it and state whether or not that is the note that you received from the Lewises? A. Yes, sir.

Mr. Davidson: We offer it in evidence, if your honor please, as Defendants' Exhibit No. 18.

The Court: Very well.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 18 to the jury.)

Q. Now, you had known the two Lewises for quite a long time, hadn't you, Mr. Bohnefeld? A. About eight years.

Q. You had transacted all your business at the Liberty National Bank, hadn't you? A. Yes, sir.

Q. What business were you engaged in there in Tulsa?

A. The cleaning and dyeing business.

Q. Did you file with the bank a financial statement?

A. Yes, sir.

Q. What did you show your net worth to be?

A. I don't remember, but I was solvent all right, the note was a good note.

Q. It showed your net worth to be in excess of $250,000.00, didn't it? A. I believe about that, yes, sir.

Q. And you were actually worth that much? A. Yes, sir.

Q. Now, you knew—your financial statement showed a net worth of $266,042.56, didn't it?

A. Well, that is about right. I didn't make that statement up.

Q. That is about right, was it? A. I think so.

Q. You say you didn't make up that statement?

A. I don't believe that particular copy.

Q. Well, you made the original of which this is a copy?

A. Yes, sir, that is about right.

Q. All right. Now, you knew pretty well what properties A. E. Lewis and W. L. Lewis had, didn't you?

A. No, I didn't know a thing about that.

Q. You knew they owned about 75 per cent of the stock of the Liberty National Bank, didn't you?

A. Well, they told me at the time that they controlled the bank for which they had been offered $350,000.00 less than ninety days ago. He mentioned that to me at the same time he told me about his other assets.

Q. And you knew independently about what they said to you at that time about their Bristow oil property, didn't you?

A. Well, I just knew what I read about it in the paper. I didn't know anything about that personally at all.

Q. But you knew aside from what they said to you at that time about their Mingo farm?

A. I knew about their Mingo farm, yes, sir.

Q. Aside from what they said to you there, you had an opinion at that time that they were worth about a million dollars, didn't you?

Mr. Dodds: I object, if your honor please. I can't see what his opinion as to their being worth a million dollars has to do with this case.

The Court: Very well, proceed.

A. Well, really I had never formed any opinion as to the amount of their worth, but it was just my impression that they were at least well-to-do.

Q. Now, did you understand that you could bring the note that they gave you in there at any time and take up with it your note to the bank?

A. Yes, sir, it was my understanding it would be exchangeable for my note at any time I called for it.

Mr. Davidson: That is all, if your honor please.

The Court: Stand down.

(Witness excused.)

ROY A. KOONS,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:.

Direct Examination by Mr. Dodds.

Q. Mr. Koons, your name is Roy A. Koons, is it not?
A. Yes, sir.
Q. And you are a resident of the City of Tulsa?
A. Yes, sir.
Q. How long have you lived there, Mr. Koons?
A. Since 1917.
Q. And what has your employment been since that time generally?
A. With the Chessnut-Smith organization most of the time.
Q. An oil company? A. Yes, sir.
Q. What do you do for that company?
A. At present I have charge of one of the companies.
Q. Mr. Koons, I ask you whether you had occasion—I hand you Government's Exhibit No. 53, Mr. Koons, is that your signature? A. Yes, sir.
Q. What is that piece of paper? A. A note.
Q. In what sum? A. $29,500.00.
Q. Note made by you to the Liberty National Bank of Tulsa? A. Yes, sir.
Q. On December 22, 1922? A. Yes, sir.

Mr. Dodds: Government's Exhibit No. 53 is offered in evidence.

Q. Is this an original note, Mr. Koons, or a renewal?
A. It is the original note.
Q. It is the original note? A. Yes, sir.

(Thereupon Mr. Dodds read Government's Exhibit No. 53 to the jury.)

Q. Now, Mr. Koons, I want you to state to the jury just as briefly and distinctly as you can the circumstances under which you executed that note to the Liberty National Bank.
A. Well, the note was issued and executed for the purpose of securing $29,500.00 with which I bought certain stocks, the stocks mentioned in there from A. E. Lewis.
Q. And were the stocks delivered to you, Mr. Koons?
A. Well, the stock was transferred and delivered to me and I in turn delivered to the bank.
Q. And your note lay in the bank for the purchase price of the stocks? A. Yes, sir.
Q. Now, I ask you, Mr. Koons, whether you later, after

December 22, 1922, the date of making the note, whether you later made payments upon that note? A. Yes, sir.

Q. Witness, I hand you Government's Exhibit 54-A being a check payable to the Liberty National Bank signed R. A. Koons in the sum of $160.00 bearing the notation thereon "On note Moon dividend eight fifteen", and ask you what that $160.00 was paid for to the bank?

A. Paid to apply on the $29,500.00.

Q. That was paid to apply on this note you just had here in your hand?

A. Yes, sir.

Q. I hand you Government's same Exhibit, but letter "B", and ask you what that is? A. Check for $200.00.

Q. What was it for?

A. The same answer, was to apply on that note.

Q. To apply on the same note? A. Yes, sir.

Q. Exhibit 54-C, what was that?

A. That was to apply on the note.

Q. How much is that check? A. $800.00.

Q. When was that made? A. September 21, 1923.

Q. Now, Government's Exhibit 54-D next?

A. Check dated September 17, 1923, for $504.00.

Q. Was that, Mr. Koons, was that paid on this note?

A. It was.

Q. And 54-E, how much is that check? A. $400.00.

Q. Was that paid on this note? A. It was.

Q. 54-F. Dated June 18, 1923, for $504.00.

Q. What is this check, the next exhibit?

A. Dated March 16, 1923, for $504.00.

Q. That is Exhibit G, $506.00? A. $504.00.

Q. Was that paid on the same note? A. It was.

Q. Government's Exhibit 54-H?

A. Dated March 15, 1923, for $320.00.

Q. What was the purpose of that check, Mr. Koons?

A. To apply on the note.

Q. 54-I? A. Check dated February 15, 1923, for $800.00.

Q. What was the purpose of that check?

A. To apply on the note.

Q. And 54-J. That last is $3,400.00? A. $800.00.

Q. I beg your pardon.

A. January 22, 1923, for $200.00. That one was applied on the note.

Q. That was actually applied on the note? A. Yes, sir.

Q. Was any of the others applied on the note?

A. They were not.

Q. Only one check of $200.00 out of all of these was the one actually applied? A. At the time, yes, sir.

Q. So there may be no mistake, all of the others I have

here handed you, all of these other checks were paid on the note? A. Yes, sir.

Q. Do you know how much they aggregate approximately? A. I do not, no, sir.

Q. Now, Mr. Koons, who were these checks given to at the time that you took them into the bank to make the payment on this $29,500.00 note of yours?

A. Part of them were given to A. E. Lewis and part to W. L. If neither of them was in they were given to whoever was in the discount cage.

Q. Whoever happened to be there at the time?

A. Yes, sir.

Q. Did you have any knowledge at the time you were making all those payments that those sums were not actually being applied on your note in the bank?

A. I supposed that they were.

Q. You supposed they were applied on it? A. Yes, sir.

Q. I notice that you made many of these checks so as to read "to apply on note" in the corner of them, a number of them make the statement, Mr. Koons, when did you first learn that these sums of money that you had so paid in to reduce your note, were not actually applied on it?

A. I don't know the exact date. It was after the bank was taken over by the Security though.

Q. And how did you learn it after the bank had been taken over by the Security?

A. Well, the first intimation I had on it was when Mr. Ramsey of the Security National called me on it; well, I didn't——

Q. Called you in relation——

A. He called me in relation to the note; he mentioned the amount of the note and I don't believe he mentioned then whether it had been reduced.

Q. You found out then these payments had never been credited upon your note at the bank? A. Yes, sir.

Q. And what did you do about the matter, Mr. Koons?

A. I got in touch with Mr. Lewis, A. E. Lewis.

Q. Was anyone else with you when you got in touch with Mr. Lewis?

A. Well, I got in touch with him by letter the first time and he called me by telephone.

Q. This was after the bank closed? A. Yes, sir.

Q. And I ask you in short, did you go up to Mr. Lewis and make demand on him for this money? A. I did, yes, sir.

Q. What was said to you by the defendants or either of them when you went to them concerning this matter?

A. W. L. Lewis wasn't there, I talked to A. E. Lewis.

Q. What did he have to say to you, Mr. Koons?

A. He said that he couldn't make it good, but would try to make an effort to make up the amount.

Q. Was anything done there that time at that first meeting? A. Not materially, no, sir.

Q. Was that at his house? A. Yes, sir.

Q. And were you there alone at that time?

A. No, Mr. A. M. Ballard was with me.

Q. He had a similar transaction, did he not? A. Yes, sir.

Q. And you went back again? A. Yes, sir.

Q. Did you and Mr. Ballard go together the second time?

A. Yes, sir.

Q. What was done the second time you went back to the Lewis house?

A. The next time it was talked over again and there was some appointment made for a later date when he was to make the amount good.

Q. Now, this was within a month or so after the bank closed?

A. I don't remember just what time did elapse.

Q. Now, I will ask you if you went back still the third time and actually did get the money? A. Yes, sir.

Q. And whether when you went back the third time the money was paid to you there in cash at the Lewis' house?

A. Yes, sir.

Q. Was it handed into your hands?

A. Not into my hands, I don't think.

Q. Who did get it?

A. I think it was counted into Mr. Ballard's hand.

Q. It was approximately $14,000.00 altogether, wasn't it? A. Yes, sir.

Q. And do you remember what denomination the bills were in that were paid over that day?

Mr. Davidson: If your honor please, we object to that; it is immaterial what denomination the bills were.

The Court: I expect so.

Mr. Dodds: Well, I will withdraw the question. I don't care to press it.

Q. I notice that these checks apparently total approximately $4,300—$4,292, that we have here; was that your understanding of the matter?

A. I forgot just what the amount was.

Q. Yes. Now, when you, after the bank closed and you went and demanded this money and finally got it, did you go and pay the note with it?

A. It was applied on the note; there was a new note made to the Security National Bank.

Q. Yes, and it was applied on it as far as it went?

A. Yes.

Q. And this obligation, as such, retired in that way?

A. That particular note, yes, sir.

Q. That particular note. Just one moment, Mr. Koons. Mr. Koons, I hand you Government's Exhibit No. 55, and ask you if that is a photostatic copy of the letter of agreement under which you purchased the Lewis stock that you have spoken of here? A. It appears to be, yes, sir.

Mr. Dodds: This letter of agreement we offer in evidence as having been qualified by the witness' testimony.

Mr. Davidson: That is all right.

(Mr. Dodds reads to the jury Government's Exhibit No. 55.)

Q. Now, Mr. Koons, at the time that this letter was actually signed by you, I ask you if it appeared just as it does now—is that just exactly the way it was when it was signed by you? A. It is not.

Q. What difference has been made in the letter since that time? A. One line has been added.

Q. What was the line that was added to it?

A. "All dividends received by you to be returned to me."

Q. That line was not in the letter at the time you got it?

A. No, sir.

Q. You later requested a copy of the—or your agreement back, did you, Mr. Koons?

A. When a new option was made, I requested that the original be returned to me.

Q. Did you get it back? A. No, sir.

Q. By the way, did you ever know of that typewritten line being inserted in there up until the trial of some of these Lewis cases? A. Yes, I did.

Q. When did you first notice it?

A. When that photostatic copy was sent me I noticed it.

Q. You noticed it the first thing? A. Yes, sir.

Q. That was at the time you went out there to the house?

A. It was during that time, between the two visits.

Q. I show you Government's Exhibit No. 56, and ask you if that is a piece of the original from which that photograph was made? A. It is, yes, sir.

Q. I ask you if, when you asked for the original agreement, if that is what you got?

A. That was mailed back to me.

Mr. Dodds: That was mailed back to you. All right, that is all.

The Court: Cross examine.

Cross Examination.

By Mr. Davidson:

Q. Mr. Koons, you were employed by some of these companies in which this stock existed, were you not?

A. Yes, sir.

Q. What position did you hold with the companies?

A. At that time I think I had charge of the accounting department.

Q. Accounting department of what company?

A. I handled all of them.

Q. Handled all of them? A. Yes, sir.

Q. You were acquainted with A. E. Lewis and W. L. Lewis previous to that time, weren't you? A. Yes, sir.

Q. These companies transacted their banking business at the Liberty National Bank, didn't they?

A. I don't think they did at that particular time, but they had transacted a lot of business there, yes, sir.

Q. They had. Now, you knew that A. E. Lewis owned stock in these companies, didn't you? A. Yes, sir.

Q. Was this matter of this stock transaction first mentioned by you to A. E. Lewis or by A. E. Lewis to you?

A. By him to me.

Q. Tell the jury just as near as you can what was said by Mr. Lewis and by you in that first conversation.

A. Well, the first conversation, Mr. Lewis mentioned to me that he wanted to sell this stock or wanted to make this transfer as we made it.

Q. Did he tell you how he wanted to make it?

A. In what way?

Q. Did he tell you how he wanted to make that transfer at the first conversation?

A. I am not sure whether he said just how he wanted to make it or not, but it was the understanding that he was to have an option back on the stock.

Q. Was that his proposition?

A. No, at first I don't think it was. When we finally signed the option, though, that was.

Q. What was his first proposition?

A. Well, I don't think there was any particular proposition he mentioned to me. He mentioned the values of the stock and I checked up the values.

Q. You knew the values, did you?

A. I thought I knew, yes, sir.

Q. Yes, and did you not agree to go into this transaction with him during that first conversation

A. I don't believe so, in the first one; no; I am not sure about that.

Q. Where did that first conversation take place?
A. In Mr. Lewis' office.
Q. At the bank? A. Yes, sir.
Q. At his invitation? A. Yes.
Q. You did not enter into the agreement at that time, did you? A. At the first conversation, no, sir.
Q. You told him you would think it over, didn't you?
A. Yes.
Q. You came back how soon after that?
A I don't remember just how soon; it was a few days, I think.
Q. And when you came back, you did enter into this arrangement? A. Yes, sir.
Q. This contract was signed, or this letter was signed by A. E. Lewis and the terms of it accepted by you over your signature, wasn't it? A. Yes, sir.
Q. And you now say that that letter was in the exact condition it is now, except that one line has been added in reference to the dividends? A. Yes, sir.
Q. In other respects, it is just exactly the same as it was when you signed it? A. Yes, sir.
Q. Now, didn't you tell Mr. Lewis, in that first conversation when he mentioned these matters to you that you did not have the money to buy this stock?
A. I don't think so; I think he knew that.
Q. You think he knew that?
A. I kept my account there.
Q. And there wasn't anything said about you not having the money to buy it? A. I don't think so, no.
Q. You were a borrower at the bank at that time, were you not? A. I believe I was—I expect I was.
Q. And had been for some time? A. Different times, yes.
Q. You owed a note there at the bank at that time, didn't you? A. Yes, I think I did.
Q. And that note continued on up until the Security National Bank took over the Liberty, didn't it? A. Yes, sir.
Q. Now, why did you—why was it put in that letter that A. E. Lewis was to pay the interest on the $29,500 if he exercised the option unless he was to get the dividends?
A. I don't know why it was put in there.
Q. You don't know why? A. Huh-uh.
Q. Did it ever occur to you anything peculiar about that?
A. Well, if it did—no, it didn't exactly occur to me.
Q. Didn't you testify in the other case that that was a strange thing to you, you didn't understand it and never did?
A. Well, I didn't pay any particular attention to it.
Q. You mean that you were going into a deal of $29,500 and was not paying any attention to the terms of it?

A. Well, that part of it could not have affected me, the seven per cent interest on it.

Q. Could not have affected you? A. No.

Q. Now, Mr. Koons, as a matter of fact, wasn't that a wash transaction? A. I could not see it that way, no, sir.

Q. Didn't Mr. Lewis tell you in that conversation when he first proposed this matter to you that he needed some money and that he had bought this stock at a price above what the market value of it then was, that he was going to have to make his income tax return, and that he wanted to take credit on his income tax return for the loss that that stock represented to him at that time, and asked you to make this transaction with him so that he could obtain this money and also take credit on his income tax for his loss on this stock?

A. I don't think so, no, sir.

Q. That—He did not say that to you? A. No, sir.

Q. Nothing of that kind said in that transaction?

A. If he did I didn't pay any attention to that part of it.

Q. Who paid the interest on that $29,500 note?

A. I did not.

Q. Well, who did?

A. Well, the first time he paid it, or I paid it with money that was furnished into my account by him, and the next time it was paid with a check on my account and a deposit made to offset it, and the last time I don't know.

Q. Did Mr. Lewis furnish you with the money the first time? A. The first time, yes, sir.

Q. The first time, and you then paid the first interest with that money? A. Yes, sir.

Q. Now, that money—that interest money was placed to your credit in your account in the Liberty National Bank?

A. The first one I deposited, yes, sir.

Q. Allie Lewis gave you the money and you deposited it to your credit? A. Yes, sir.

Q. And then you wrote your check to the bank for the interest? A. Yes, sir.

Q. How much was that?

A. I am not sure; around $500, I think.

Q. Around $500. Now, when that note fell due, the interest was paid again, wasn't it?

A. I don't think it was paid when it fell due; the check showed up in my account for seven hundred and some odd dollars, and I didn't know where it came from, and then a month later a deposit was made to offset it.

Q. Your account was charged with that interest, seven hundred and some odd dollars, wasn't it? A. Yes.

Q. And later on that amount was deposited to your credit at the bank, wasn't it? A. Yes, sir.

Q. Do you know who deposited that seven hundred and some odd dollars to your credit? A. No, I never learned that.

Q. Did you ever learn? A. No, sir.

Q. Did you ever ask?

A. I don't think I did, specifically, no, sir.

Q. You got your check back didn't you? A. Yes.

Q. You detected that matter in your account, didn't you?

A. That is when I called it to their attention, when the bank statement came at the end of the month.

Q. What was said then?

A. I don't remember then what was said—said it would be taken care of, and it was.

Q. Who said that?

A. I am not sure which one of the Lewises; the one I was talking to.

Q. It was one of them, wasn't it? A. I think so, yes, sir.

Q. When you found your account had been charged with that, you went to them about it? A. Yes.

Q. Why?

A. Because it overdrew my account, was the main reason.

Q You did not go to them because they were charging your account with interest on their note, did you?

A. No, not particularly, no.

Q. Now, that interest charged against your account was later made good, wasn't it? A. Yes, sir.

Q. And one or the other of the Lewises told you when you went to them that they would do it, didn't they?

A. Yes, sir.

Q. Did you ever go back and see about renewing that note? A. I don't think so, no.

Q. Did you ever pay any more attention to that note until after the Security National Bank purchased the Liberty?

A. I don't believe I did, no.

Q. Now, those checks that have been offered in evidence here by you represent the exact amount of dividends that you received from these stocks, don't they?

A. Up to that time, yes, sir.

Q Up to the time that the Security bought the Liberty?

A. Yes, sir.

Q. Now, you received notices from time to time from these companies as to these dividends, didn't you?

A. I did not receive notices in particular, no, sir.

Q. You received notices as to the condition of the bank, from time to time? A. Each year, yes, sir.

Q. You took them down from time to time and showed them to Mr. Lewis, didn't you?

A. I don't know particularly that I did; I might have.

Q. You went down there and consulted Mr. Lewis about the time of the stockholders' meeting as to how he wanted you to vote that stock, didn't you?

A. I don't think so, no, sir.

Q. You don't think so? A. No.

Q. Are you sure you did not?

A. I would not be sure, but I don't see any reason why I should, except he had an option on the stock. I might have.

Q. Did you ever go to him and ask him whether or not he was going to exercise that option?

A. I don't think so.

Q. I want to ask you this question—if you can answer it, why is it that there was included in this agreement between you and A. E. Lewis this language: "I hereby agree to reimburse you for any income tax that you might have to pay arising out of this transaction."

A. Well, I did not know what the provisions of the income tax law might be, and he might exercise his option before the close of that year, and it might have affected me in some way; I didn't know whether it would or not.

Q. Was that put in there at your suggestion?

A. Yes, sir.

Q. It was? A. Yes, sir.

Q. And not at Mr. Lewis' suggestion? A. Yes, sir.

Q. Didn't you say that when you came in there to sign up these papers that they were already prepared?

A. The second time, yes, sir.

Q. Yes. And you had not seen them before, until they had been prepared, had you? A. I don't think so, no.

Q. Well, then that was not put in there at your suggestion, was it? A. Why not?

Q. Because that was prepared when you were not there.

A. That was suggested at the first time when we talked of it the first time.

Q. Did you tell him the first time that you did not accept the proposition the first time? A. I did not accept it.

Q. Tell him you would think it over?

A. Did not accept it particularly, but that was mentioned.

Q. Oh, that was mentioned? A. Yes.

Q. You suggested that at that time? A. Yes.

Q. In that first conversation? A. Yes, sir.

Q. Now, Mr. Koons, whenever you received a dividend on any of this stock, you took the dividend check and put it to your credit in the Liberty National Bank, didn't you?

A. Yes, sir.

Q. Your personal account? A. Yes, sir.

Q. You then drew your check on that account for the same amount and turned the check over to A. E. Lewis, didn't you?

A. Well it would amount to the same thing. I had other stocks in the same company, and I made a check for the amount of that proportion of the stock.

Q You had other stock in the company besides this?

A. Some of it.

Q. That you got from Lewis? A. Some of them, yes, sir.

Q. Your dividend checks were in a lump sum, were they?

A. Yes.

Q. And you deposited the entire amount of the dividends to your credit and then you figured out a proportion of that that belonged to these stocks? A. Yes, sir.

Q. Was that it? And then wrote your check for that amount? A. Yes, sir.

Q. And did you take the matter—take it down to the bank and deliver it—the checks? A. Usually did, yes, sir.

Q. If A. E. Lewis was there you would deliver them to A. E. Lewis? A. Yes, sir.

Q. And if he was not you would deliver them to W. L. Lewis? A. Yes, sir.

Q. And if neither A. E. or W. L. Lewis was there you delivered them to whoever was at the discount window, was that it? A. Yes, sir.

Q. Now, can you tell me a single solitary one of those checks that you ever delivered to anybody in that bank, other than A. E. Lewis or W. L. Lewis?

A. I can't specify any particular one, no, sir.

Q. No. Can you name any clerk or individual in that bank besides A. E. Lewis or W. L. Lewis that you ever delivered one of those checks to? A. No, I could not.

Q. You could not? A. No.

Q. As a matter of fact, Mr. Koons, every last one of those dividend checks, or those checks that have been offered in evidence here as dividend checks, were delivered by you to A. E. Lewis in the Liberty National Bank, weren't they?

A. No; A. E. or W. L. or whoever was in the discount window.

Q. Yes. Now, you never paid any attention to this transaction any more after it took place until after the Security National Bank took over the Liberty, did you?

A. What do you mean by paying any attention to it?

Q. You never went to the bank to see about it, did you?

A. Not particularly, no; I don't think I did.

Q. You never went down there to renew your note or to pay your note, did you? A. No.

Q. You never went down there to pay any interest on it or see about extending your note, did you?

A. Except to make these appliances, no, sir.

Q. Did you ever get a request from the bank to renew that note? A. No.

Q. Or any request from the bank for the payment of the note? A. No, sir.

Q. Now, after the Security National Bank took over the Liberty and Mr. Ramsey called you about this note for $29,500, you immediately tried to get in touch with A. E. Lewis, didn't you? A. Yes, sir.

Q. Before you answered Mr. Ramsey about that note?

A. Yes, sir.

Q. You were not able to get him, were you?

A. I could not get him on the 'phone, no, sir.

Q. You wrote him a letter, didn't you? A. Yes, sir.

Q. I hand you a letter which I will ask the reporter to mark as Defendant's Exhibit No. 19, and ask you to examine it and state whether or not that is the letter that you wrote Mr. Lewis, and if that bears your signature?

A. It is, yes, sir.

Q. That is the original letter, isn't it? A. Yes, sir.

The Court: Very well.

Mr. Davidson: We offer in evidence, if your honor please.

The Court: All right.

(Thereupon, Mr. Davidson reads to the jury Defendant's Exhibit No. 19.)

Q. Now, if that was a straight out transaction and purchase by you of that stock, why did you expect A. E. Lewis to assume that note?

A. Because it was specified in the option that he would, and the stock at that time if it had been forced on the market would not have brought what it should, because it is not known.

Q. You were then demanding that he exercise the option, were you? A. I was asking that he would, yes, sir.

Q. Mr. Koons, I will ask you didn't between the transaction in December, 1922, and the time that this Security National Bank purchased the Liberty National Bank, if you didn't take down to Mr. Lewis at the Liberty National Bank, A. E. Lewis, some correspondence from some of these companies in which this stock existed, letters relative to their financial condition? A. I might have, yes, sir.

Q. Well, didn't you do that?

A. I don't know whether I did or not.

Q. Didn't you testify on the trial of the other case that you did?

A. I don't think I did because I couldn't remember.

Q. Did not you identify the exhibits that you had taken down there? A. I don't think so.

Q. Mr. Koons, you finally got in touch with Mr. Lewis and you and Mr. Ballard went out to his house, did you?

A. Yes, sir.

Q. That was along the latter part of November, 1923, wasn't it? A. We went out there about three times.

Q. About three times? A. Yes, sir.

Q. You finally made a new arrangement about that, didn't you? A. Yes, sir.

Q. And that was reduced to writing, wasn't it?

A. Yes, sir.

Q. Who was present on that occasion?

A. A. E. and W. L. Lewis, E. G. Lewis, Mr. Yancey and another attorney, I think his name is Silverman, Mr. Ballard and myself.

Q. Now, who was Mr Yancey?

A. Mr. Yancey is an attorney. I don't know who he did represent there.

Q. You knew he did represent the Security National Bank, didn't you?

A. I know he does now, I don't know that he did at that time or not.

Q. You had nothing to indicate to you that he represented the Security National Bank at that time?

A. Not to me, no, sir.

Q. Did he go out there with you and Mr. Ballard?

A. Not with me. I don't know whether Ballard and I went together the last time.

Q. How did Yancey happen to be there? A. I don't know.

Q. Who is Mr. Silverman, and who did he represent?

A. He represents the Lewises.

Q. I hand you a paper marked for identification defendant's exhibit No. 20 and ask you to examine it and state whether the signature of R. A. Koons on there is your signature? A. It is, yes, sir.

Q. Where was that instrument executed?

A. At A. E. Lewis' home.

Q. On what occasion?

A. At the time the $14,000.00 was delivered to us.

Q. And when these other parties were present?

A. Yes, sir.

Q. You saw that contract executed by all the parties, didn't you? A. I saw it signed, yes, sir.

Q. Now, do you know who prepared this contract?

A. I do not, no, sir.

Q. Do you know who made the additions to it in hand writing? A. Mr. Silverman made the notations.

Q. This Defendant's Exhibit No. 20 was the agreement reached on that occasion and executed on that occasion between all you parties? A. Yes, sir.

Mr. Davidson: We offer it in evidence, if your honor please Defendant's Exhibit No. 20.

The Court: Very well.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 20 to the jury.)

Q. Now, did you know A. M. Ballard at the time that you made this original deal with A. E. Lewis?

A. Yes, sir.

Q. Was he connected in any way with any of these corporations? A. Not at that time, no, sir.

Q. He was a friend of yours, was he? A. Yes, sir.

Q. I will ask you if Mr. A. E. Lewis didn't ask you at that first conversation if you knew of anybody else that would be likely to make that kind of an arrangement with him about this stock?

A. I mentioned to him Mr. Ballard might, yes, sir.

Q. Did he ask you if you knew of anybody?

A. Yes, sir, I think so.

Q. You mentioned A. M. Ballard to him?

A. I believe I did.

Q. And did you go to see Ballard for him?

A. I don't believe I did; I believe he got hold of Ballard.

Q. Did you testify at the trial of one of the other cases that you went to see Ballard and told him about it?

A. I may have, I am not sure whether I did or not, not that particular item.

Q. You telephoned to Ballard from A. E. Lewis' office?

A. I don't think so, I might have, I am not sure.

Q. You are not sure then at all whether or not you first got in touch with Ballard?

A. I know I talked to Ballard; I don't know before or afterwards.

Q. Did you tell him what Lewis wanted with him?

A. I don't know whether I told him that or not.

Q. What did you tell Ballard?

A. I am not sure just what I did. I told him Mr. Lewis wanted to see him, or I may have told him something about the transaction, I am not sure.

Q. At the time you talked to Ballard, you hadn't made your deal with Lewis, had you?

A. I don't believe so, no, sir.

Q. But you did afterwards, the next day?

A. I don't know whether it was the next day or a day or so.

Q. You were not present when Ballard made his deal with Lewis, were you? A. No.

Q. It wasn't made for possibly a week later, was it?

A. I don't know.

Q. You don't know when it was made, do you?

A. No, sir.

Q. Mr. Koons, at the time you made this deal with A. E. Lewis in December, 1922, what was the reasonable market value of these stocks involved in this transaction?

A. I figured that the figure of $29,500.00 was approximately what they were worth at that time, possibly a little more than that according to my figures.

Q. There was no particular bargain in these stocks at that price, was there?

A. Not exactly, no, sir. I figured that was what they were reasonably worth to me.

Q. Now, what was your net worth at that time, Mr. Koons?

A. I cannot say for sure what it was at that time.

Q. Approximately?

A. Oh, I would say fifteen or twenty thousand dollars.

Q. Fifteen or twenty thousand dollars? A. Yes, sir.

Q. Over and above your debts and liabilities?

A. Yes, sir.

Mr. Davidson: I think that is all.

Redirect Examination by Mr. Dodds.

Q. Mr. Koons, calling your attention to the fact that on these checks you have written—that you have testified you have paid on the note you have written on them, these five checks, "To apply on note," "To apply on note," "On note," "On note," "On note." I ask you when you took those checks in there to the Lewises and handed them to them if there was ever any question raised or any objection made by either of them to the fact they stated on the check you gave them to apply on your note? A. No.

Q. There was never any question raised about it?

A. No, that was put on there for my own reference however.

Q. You wanted to know when your checks came back what they had been made for?

A. Just for a memorandum more than anything else.

Q. Now, I hand you Government's Exhibit No. 57 and ask you if it is a copy of a letter written by you to the Lewises, the defendants?

A. That was the first one I wrote them, yes, sir.

Q. I hand you Government's Exhibit No. 58 and ask you if that is the answer that you got to a letter written to the Lewises in connection with this matter?

A. I don't know whether it is an answer to this letter or not.

Q. No, but is it in answer to a letter?

A. It is in answer to a letter or a telephone conversation, I don't recall which.

Mr. Dodds: Both of these letters are offered in evidence. It is made competent, if your honor please, by the cross examination of counsel.

Government's Exhibit 58, November 14, 1923, that was just a few days after the bank closed?

A. Yes, sir, it was.

(Thereupon Mr. Dodds read Government's Exhibit No. 58 to the jury.)

Q. Is that a photostatic copy that you received, the photostatic you saw a few moments ago here as Government's Exhibit? A. With that letter, yes, sir.

Q. Now, I ask you, Mr. Koons, if when you got that photostatic letter with this letter, photostatic copy with this letter, under date of November 14, 1923, Government's Exhibit 58, if you then noticed that extra typewritten line had been inserted in it? A. I did.

Mr. Dodds: I will read Government's Exhibit No. 57.

(Thereupon Mr. Dodds, read Government's Exhibit No. 57 to the jury.)

Q. Then this letter, and this photostatic copy containing the inserted line came along to you following this letter you wrote to Mr. Lewis? A. That was sometime later.

Q. Then it was a week later according to the date?

A. Yes, sir.

Q. Now, Mr. Koons, was there ever any question raised at any time in any way during the time that your note was there in the bank with you from the beginning of these payments to the end of them but what they were being applied on your note?

A. So far as I knew, they were; nothing was ever said to me about it.

Q. You had no reason to believe to the contrary? A. No.

Q. I hand you Government's Exhibit No. 45. Are you familiar with the signature of A. M. Ballard?

A. I have seen it an awful lot of times and am pretty familiar with it, yes, sir.

Q. Is that his signature on that document?

A. It looks like his signature, yes, sir.

Q. Did you know of your own knowledge of Mr. Ballard executing a note in the sum of $21,750.00 to the Liberty National Bank on December 29, approximately the time you did?

A. I didn't see him sign the note, no, sir.

Q. Was that note the subject or part of your conversation at the time that this contract that Mr. Davidson has read in evidence here was made?

A. Yes, sir, that was the subject of it.

Q. Now, Mr. Koons, I show you Government's Exhibit No. 65, is that your signature?

A. Yes, sir, that is my signature.

Q. That is your signature as an officer of the Moon Gasoline Company? A. Yes, sir.

Q. Do you know whether that is Mr. Ballard's signature on the back of it endorsed under the words "To apply on note?" A. It appears to be, yes, sir.

Q. Government's Exhibit No. 59 is that your signature as an officer of the Moon Gasoline Company? A. Yes, sir.

Q. I ask you whether that is Mr. Gallard's signature under the words "To apply on note," on the back?

A. It appears to be, yes, sir.

Q. Government's Exhibit No. 60, is that your signature as an officer of the Moon Gasoline Company? A. Yes, sir.

Q. And Mr. Ballard's signature under the words "To apply on note," on the reverse?

A. Apparently, yes, sir.

Q. No. 61, is that your signature as an officer of the Sun Gasoline Company? A. Yes, sir.

Q. And Mr. Ballard's signature under the words "To apply on note," on the back of it? A. Apparently, yes, sir.

Q. No. 62, is that your signature as an officer of the Sun Gasoline Company? A. Yes, sir.

Q. And on the reverse side, Mr. Ballard's signature under the words "To apply on note?"

A. It appears to be, yes, sir.

Q. Exhibit 63, is that your signature as an officer of the Sun Gasoline Company? A. Yes, sir.

Q. Is that Mr. Ballard's signature and are there any words, "To apply on note," on that? A. Yes, sir.

Q. Would you say that was Mr. Ballard's signature?

A. It is not.

Q. Do you know who signed his name on there?

A. No, sir.

Q. Are you familiar with the writing? A. No.

Q. Government's Exhibit 64, is that your signature as an officer of the Sun Gasoline Company? A. Yes, sir.

Q. And is that Mr. Ballard's signature there under the words, "To apply on note?" A. It appears to be.

Mr. Dodds: Government's Exhibits No. 59 to and including No. 64 are offered in evidence, being checks that it is the Government's contention were paid to apply upon Mr. Ballard's note which has heretofore been placed in evidence.

Mr. Davidson: To which each of the defendants object because there is no evidence in this case that renders these notes competent, here; there is nothing to show here that these notes were paid to the Liberty National Bank or were applied on this Ballard note?

The Court: I suppose the endorsements show where the money was to go.

Mr. Davidson: No, I don't think so, if your honor please.

Mr. Dodds: The endorsement carries—the checks each carry the endorsement or paid stamp of the Liberty National Bank of Tulsa with the date. I think it is true as to each one.

Mr. Davidson: These checks were not drawn on the Liberty National Bank; they were drawn on the First National Bank or the Exchange National Bank.

Mr. Dodds: I say, bear the endorsement or date stamped.

The Court: Mr. Ballard will not be here?

Mr. Dodds: No, he is out on the Pacific coast if your honor please. We are trying to get in touch with him.

The Court: Let them go in.

Mr. Davidson: Note an exception as to each exhibit.

The Court: All right.

Q. Now, witness, referring to this contract that was read in evidence here concerning your settlement with the Lewises as to these payments on the notes, I wish to ask you how you came to sign, to execute that contract up there at the house that night? A. How we made it, in what way?

Q. What was your reason or purpose in doing it?

A. To secure the $14,000.00 reduction.

Q. Yes, if you signed that contract, you got the money?

A. Yes, sir.

Q. If you didn't sign it, you didn't get the money?

A. Well, I suppose not, I don't know for sure.

Q. And that would leave you owing the bank all that you had already paid? A. Yes, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Koons, I will ask you if after Mr. Silverman had written in a portion of this contract here, that is in pen and ink, if you or Mr. Ballard, one or the other of you, whichever it was, in the presence of the other turned to Mr. C. L. Yancey and asked him whether or not you ought to sign the contract with these additions to it?

A. I don't remember, may have.

Q. I will ask you if Mr. Yancey didn't say to you gentlemen in response to that, if that were the facts for you to sign it, if it wasn't the truth not to sign it?

A. I don't think he did. I don't remember whether he did or not. He didn't say it to me, I don't think.

Q. And didn't each of you then sign the contract and deliver it?

A. I am not sure of that. We signed it, but whether there was any conversation with him, I don't remember it.

Q. Now, at the time you had this original transaction with A. E. Lewis, there was only one copy of that letter made, wasn't there? A. I don't know how many were made.

Q. You didn't get a copy of it, did you?

A. I didn't get one, no.

Q. The only [] that you knew of was the one that A. E. Lewis kept? A. That was the only one I knew of.

Q. It was the only one you saw, wasn't it? A. Yes, sir.

Q. Well, Mr. Koons, I hand you a paper marked for identification Defendants' Exhibit No. 21, and ask you to examine it and state whether or not you received that from the Moon Gasoline Company after you had had this transaction with Mr. A. E. Lewis, and before the Security National Bank took over the Liberty?

A. I suppose I did; all stockholders receive that.

Q. I ask you if you didn't take that exhibit down and deliver it to Mr. A. E. Lewis?

A. I might have, I don't remember. What company is that?

Q. That is the Moon Gasoline Company.

A. I don't know whether I took it down and delivered it to him or not.

Q. You got statements like this from all these companies from time to time, did you?

A. Will you let me tell what that statement is?

Mr. Davidson: It shows for itself, and we offer it in evidence, if your honor please.

The Court: Very well.

Mr. Davidson: I will not take time to read it. The jury may look at it, if they want to see it.

The Court: All right.

Q. Now, those letters from these companies came to you by mail, didn't they?

A. I may have made part of them. I was an officer of the company.

Q. You may have prepared that?

A. I may have, yes, sir.

Q. You didn't prepare that, did you?

A. I don't know; it is signed by Mr. Black, but I may have prepared it.

Q. You admitted on the trial of this other case you received that letter from the company and took it down and gave it to Mr. Lewis?

A. I couldn't remember positively. He had an option on the stock and would be entitled to it.

Q. Now, Mr. Koons, I hand you a paper marked for identification Defendants' Exhibit No. 22, and ask you to examine it and state whether or not that is your signature, the Moon Gasoline Company by you? A. It is, yes, sir.

Q. I will ask you to look at the signature on the back of it and state whether or not that is A. M. Ballard's signature?

A. Apparently, yes, sir.

Q Now, I hand you a check which I ask the reporter to mark Defendant's Exhibit No. 23, and ask you to examine that and state whether or not that is A. M. Ballard's signature to that check? A. It appears to be, yes, sir.

Mr. Davidson: If you honor please, I don't want to delay matters any more than I can help, but I think there are some matters here that I want to ask him about in this other record.

Q. Mr. Ballard, you testified on the trial of the other case in Muskogee, did you not? A. Yes, sir.

Q. I will ask you if the following questions were not asked you on that occasion, and the following answers made by you to them: The question at page 349 of the record: "Now, I will ask you if you received from time to time letters from the company in which the stock existed with reference to the condition of the company?" And your answer was: "Answer: Most of them I mailed." Did you make that answer to it?

A. Read the question again, please.

Q. "Now I will ask you if you received from time to time letters from the company in which the stock existed with reference to the condition of the company?" Referring to the stock, now, that you had gotten from A. E. Lewis under this transaction, and your answer was: "Answer: Most of them I mailed."

A. Well, I could have answered as mailing the statements myself, because I was the officer of the company that sometimes did mail them.

Q. Did you make that answer to it?

A. I don't know what was ahead of that question, there might have been something else in connection with the case.

Q. Was this asked you: "Q. I ask you if you did not take these circulars or those letters down and deliver them to Mr. A. E. Lewis and discuss with him how he wanted you to vote this stock at the stockholders' meeting?" And your answer was: "A. No, I did not. I may have talked to him about it, as he had an option. I may have talked to him about the condition of the company." Did you make that answer on the other examination?

A. If it is in the record I suppose I did. It appears to be correct.

Q. Did you take—was this question then asked you: "Q. Did you take this printed matter down to Mr. Lewis?" "A. I might have, yes, I don't know what it is, but I might have given him some printed matter in connection with the company." Did you make that answer? A. I might have, yes.

Q. Was this question asked you: "Q. Do you remember of doing that?" And your answer was: "A. Any particular case?" "Q. Yes, any time?" "A. No, I don't remember any particular time."

A. Well, I don't remember in particular any particular one, but I might have taken them down and talked to him.

Q. Was this question asked you: "Q. You do remember taking those circulars down to him?" "A. I might have; I don't say I have." Was that your answer?

A. If it is in the record there, I suppose it is, yes, sir. It appears to be correct.

The Court: Is that all?

Mr. Davidson: That is all.

The Court: Very well, stand down. Gentlemen of the jury, we have followed this case quite persistently since you were impaneled on yesterday, and of course it will not be possible to complete the case today, or before Sunday, so we are now going to take an adjournment of court until 10:00 o'clock on Monday morning, under the ad-

monition that I know will be strictly adhered to. You may pass out and return here at 10:00 o'clock Monday morning.

(Thereupon, pursuant to the order of court, court stands adjourned until 10:00 o'clock Monday morning, January 25, 1926.)

At 10:00 o'clock A.M., Monday morning, January 25, 1926, court met pursuant to adjournment, the parties being present and represented by counsel as hereinbefore noted, whereupon the following proceedings were had and done, to-wit:

CHARLES YANCEY,

called as a witness on behalf of the Government, and being first duly sworn and examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Yancey, you are an attorney over at Tulsa, are you not? A. I am.

Q. Been in the practice there for some years? A. Yes, sir.

Q. You were here in the court room and heard the testimony--were you here in the court room and heard the testimony of the witness Koons Saturday?

A. No, I didn't hear that.

Q. I ask you, Mr. Yancey, whether you had occasion to go with Mr. Koons or to be in the home of the Lewises, the defendants here, at the time that Mr. Koons entered into an agreement with them whereby he got money back from them shortly after the closing of the bank in November, 1923?

A. Yes, sir, I was there.

Q. In what capacity were you there, Mr. Yancey?

A. I was there representing the Security National Bank of Tulsa and also in a way representing Ballard and Koons, I guess.

Q. Were you retained by Ballard and Koons?

A. No, they asked me to go down there with them.

Q. You were interested in the Security National Bank as its attorney at that time? A. Yes, sir.

Q. Now, Mr. Yancey, do you remember the circumstances of Mr. Ballard or Mr. Koons being asked to sign an agreement that was introduced in evidence here Saturday as a condition precedent to their being repaid money that they had paid on notes in the bank?

A. Yes, sir, I was there when that agreement was made.

Q. Did you draw the agreement? A. No.

Q. Did you know who did draw it? A. No, I don't.

Q. Who had it there that night, prior to the time it was signed, that day?

A. Well, it was about noon, and I think that the agreement was probably in the hands of Mr. Silverman, who was one of the attorneys for Mr. Lewis at that time. I don't know who brought it there.

Q. And had you ever seen the agreement prior to that time? A. No.

Q. Pay any attention to the terms of it?

A. No, I never saw it before that day.

Q. Now, I ask you, Mr. Yancey, whether it was as a fact required of Mr. Koons and Mr. Ballard that they execute that agreement before any money would be paid over to them?

Mr. Davidson: If your honor please, the defendants each object to the question because it is leading the witness. Now, this witness can tell just what happened.

The Court: Don't lead; let's get along.

Mr. Davidson: Note an exception.

Q. I will withdraw the question. Just state, Mr. Yancey, what happened as regards signing the agreement by Mr. Koons and Mr. Ballard.

A. Well, this agreement was produced there and Mr. Silverman read it and Ballard and Koons read it and they handed it to me and I read it and there was some discussion about the agreement and the terms of it. Mr. Silverman objected to the agreement as it was, in the form that it was in, and he took a pen and interlined it and added something to it, and after he had finished with it he handed it to Ballard and Koons to sign, and as I say, they handed it to me, and they were hesitant about signing the agreement, and they asked me what I thought about it, and I told them that if the agreement stated the facts, why to sign it; if it didn't state the facts, not to sign it. That was all there was to it. They knew whether or not it stated the truth or not, and Mr. Silverman stated that he wasn't going to have his clients pay over any money unless the agreement did state the facts, and they signed it.

Q. Then they did sign it, and then the money was paid over to them?

A. It was signed and then Mr. E. G. Lewis was there, he and A. E. Lewis went out into another room and came back with $14,000.00, I believe it was, in bills of rather large denomination, as I recall it, and paid it over to them.

Mr. Dodds: I think that is all.

Cross Examination by Mr. Davidson.

Q. Mr. Yancey, E. G. Lewis is a brother of the two defendants in this case, is he not?

A. Yes, that is my understanding.

Q. And he was there during all of this transaction when you were there, was he not?

A. Yes, he was there, but he did not say anything.

Q. It was E. G. Lewis that paid the money over, wasn't it?

A. Yes, he counted it out; A. E. and E. G. went out together and came back together and E. G. is the man that counted it out and A. E. was standing there beside him.

Q. Now, Mr. Yancey, the Security National Bank was interested in getting whatever money was paid out there by anybody on these two notes of Ballard and Koons, weren't they?

A. Yes, sir.

Q. And that is the reason you were there?

A. That was——

Q. As well as to represent Ballard and Koons, at their request?

A. Well, they had not employed me to represent them. They just asked me to go down there with them.

Q. Did you go out there with them?

A. No, not with them, but I met them there. I think they went in a separate car and I drove my car and I met them there in front of the house. I think we went in together as I recall it.

Q. When you got there there was present Ballard and Koons, A. E. Lewis, W. L. Lewis and E. G. Lewis and yourself and Mr. Silverman?

A. Yes, I think W. L. was there; I am not real sure about that.

Q. Now, you knew the terms of this agreement that was made there; you read it, didn't you? A. Yes.

Q. Ballard and Koons read it over before they signed it, didn't they?

A. Yes, they read it over and gave some thought to it.

Q. And they asked you whether or not they ought to sign?

A. Yes.

Q. And, as I understand your testimony, you told them that if it spoke the truth to sign it, and if it did not speak the truth not to sign it? A. Yes, that is what I told them.

Q. And after that they did sign it, and the deal was closed? A. That is right.

Q. And the Security National Bank got the fourteen thousand dollars?

A. That is right; and applied on their note.

Q. Did any other paper pass between the parties there on that occasion, other than the compromise agreement?

A. I don't recall that any other paper passed; I think there was some discussion of some other agreement or contract that they had, but I don't recall any papers changing hands.

Q. The other papers that were discussed was the original loan, or agreement between A. E. Lewis and Ballard and Koons, wasn't it? A. Yes.

Q. Did Mr. Koons have a photostatic copy of that agreement there? A. I don't recall that he did.

Q. You left at the same time the rest of them did, did you? A. Yes, I think we all left about the same time.

Q. Mr. Yancey, you spoke of Mr. Silverman interlining something in the agreement. I will hand you Defendants' Exhibit No. 20 and ask you to state whether or not that is the contract that you have reference to?

A. Yes, this is the contract. It was signed while I was there.

Q. Now, that contract is between Ballard and Koons, on the one side, and E. G. Lewis on the other, isn't it?

A. That is right.

Q. And the only part that A. E. Lewis takes in that contract was to—at the bottom of it, release and cancel and waive any rights of his under the original letter of agreement between him and these parties?

A. Yes, that is stated in the contract.

Q. Now, the portion that Mr. Silverman interlined is the part in pen and ink on here, is it not? A. That is right.

Q. And that is in the same condition it was in when it was signed, isn't it? A. Yes, I think so.

Mr. Davidson: That is all, if you honor please.

The Court: Stand down.

Mr. Dodds: That is all.

C. G. GARRETT

was called as a witness on behalf of the Government, and after having been first duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Your full name is what? A. C. G. Garrett.

Q. And where is your residence, Mr. Garrett?

A. Tulsa, Oklahoma.

Q. And you have been a resident of Tulsa for a long period, have you not—a number of years? A. I have.

Q. And were an officer—were you an officer of the Liberty National Bank of Tulsa during the year 1923, up until the time in that year that the bank closed? A. Yes, I was.

Q. And had been an officer for some years previous?

A. Yes.

Q. What office did you hold during the year 1923?

A. Vice-president.

Q. And how long had you been vice-president before the bank closed? A. I think about three years.

Q. Yes. Mr. Garrett, I show you Government's Exhibit 41, heretofore introduced, being the report to the Comptroller of the Currency, executed on the 11th day of April, 1923, being a report of the condition of the bank at the close of business on April 3, 1923, and ask you, Mr. Garrett, whether you had anything to do with the preparation of that report to the Comptroller? A. Yes, I made these reports out in——

Q. Well, I will have you look at Government's Exhibits 42 and 43, so that you may answer the questions as to all three of them. A. Yes, I made them out.

Q. Now, these reports to the Comptroller of the Currency, Mr. Garrett, you say you made them out; you mean that you did the clerical work of making them out, or made up the data for the report?

A. Well, I would make it out in pencil—the reports in pencil.

Q. Yes. And to whom were they turned over for completion or copying? A. For the final printed copy?

Q. Yes.

A. To the stenographer who made it out on the machine.

Q. Now, Mr. Garrett, as to the item of loans and discounts, in each of these reports, the gross item of loans and discounts—where did you get the material in each instance as to each of these Exhibits 41, 42 and 43, to fill in the item, loans and discounts, which is filled in on Government's Exhibit No. 41, with the sum of $1,986,531.70, on Government's Exhibit No. 42 with the sum of $2,106,039.51, and Government's Exhibit 43 with the sum of $2,074,216.12; now where did you get the data, Mr. Garrett, to make up that item of loans and discounts? A. Now, you mean the total there?

Q. Yes.

A. Why, that was taken from the general ledger.

Q. That was taken from the general ledger of the bank?

A. Yes.

Q. I ask you, then, whether all notes that had been theretofore discounted and discounted prior to the making of each of these reports and at the time of the making of these reports then remaining unpaid would be included in these items of loans and discounts? Do you get the question?

A. I didn't quite get it.

Q. I ask you this, whether all notes held by the bank at the time these several reports were made that were unpaid at the close of business on the dates that are recited in these several reports would be included in the items of loans and discounts? A. Yes, sir.

Q. They would be? A. Yes, sir.

Q. Now, did you examine to make up these statements, Mr. Garrett, any of the commercial paper itself? A. No.

Q. You depended entirely upon the books? A. Yes, sir.

Q. Please take these exhibits in order, Government's Exhibits 41, 42 and 43, and just have them there where you can refer to them. Now, Mr. Garrett, I show you here a note of R. A. Koons, being note No. 15099 in the sum of $29,500.00, executed December 22, 1922. Are you familiar with that particular negotiable instrument?

A. Only inasmuch as we have had it before in the cases.

Q. Now, looking at the date of that note, Mr. Garrett, I will ask you whether the sum represented by the note was included as a part of the loans and discounts in each of those three reports?

A. Yes, sir, the sum of this would be included in the total.

Q. In the total of each of those three following reports?

A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 45, being a note of A. M. Ballard, in the sum of $27,750.00, dated December 29, 1922, and ask you whether the amount of that note was included in the three reports that you made?

A. Yes, sir, that was included.

Q. You have observed the back of the notes to know when payments may have been made thereon? A. Yes, sir.

Q. And the amount of the notes, less the payments actually endorsed on the back, if any, were included in the loans and discounts in these three reports? A. Yes, sir.

Q. I show you Governments' Exhibit No. 35, Mr. Garrett, being a note in the sum of $15,000.00. Mr. Garrett, do you know whether this is an original note or a renewal?

A. No, I don't.

Q. You don't know of your own knowledge?

A. No, I don't.

Q. Then, I will just ask you this question and show that letter. If this note was a renewal of a prior note, Mr. Garrett, carrying it back through the period covered by those three reports, I ask you whether or not this note having been in the bank or the note which it renews, whether the sum of the note would have been included in the loans and discounts there in the three exhibits that you hold, 41, 42 and 43?

Mr. Davidson: Defendants object to this line of testimony, because it is incompetent. It calls for a conclusion of the witness.

The Court: Do you know whether it was or not?

Mr. Dodds: Pardon me; we found the original note.

Q. I show you Government's Exhibit 66 in connection with Government's Exhibit 35, which we just handed you, and ask you now whether the $15,000.00 involved in that transaction was actually included in the three reports which you hold in your hands as a part of the loans and discounts?

Mr. Davidson: Now, the defendants object unless this witness knows of his own personal knowledge.

The Court: Do you know?

A. Well, I know this way: These notes would be shown in the books, records, where they were loans to the bank, and being registered and made a record in the other books, I would know then they were included in this total.

The Court: Very well.

Q. Now, I ask you whether you determine from Government's Exhibit No. 21 whether or not the notes were in fact included in the books of the bank?

A. Yes, sir, this note here, No. 15077, was included in the total shown here on the report; in these reports here.

Q. You are referring when you say "in these reports here" to Government's Exhibits 41, 42 and 43? A. Yes, sir.

Mr. Davidson: What is that Exhibit 21, if you please?

Mr. Dodds: Government's Exhibit 21 was offered in evidence the first day as a blotter.

Q. I now show you the note register, Mr. Garrett, being Government's Exhibit No. 19, and ask you whether you can determine from that that the item here in question duly appeared in the note register of the bank?

A. Let's see if that was $15,000.00?

Q. $15,000.00. I think it is on that page.

A. Yes, sir, it was included in this register and consequently in that total as shown in the statement.

Q. You mean consequently in the total shown in the statements, being Government's Exhibits 41, 42 and 43?

A. Yes, sir.

Q. I now hand you Government's Exhibit No. 20, being the discount register of the bank, and ask you whether you can determine from this book that the one note I handed you here was the renewal of the other Kitless' note?

A. This note here, the $15,000.00 is a renewal of this one.

Q. Yes, Government's Exhibit 35, being a note of $15,000.00, I understand you to say, is a renewal of Government's Exhibit No. 66, for $15,000.00? A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 21, being the note blotter, and ask you whether it appears or not on there that the Government's Exhibit No. 35 was due and was renewed by Government's Exhibit No. 66, referring to the note numbers?

A. Now, this here, note No. 15,077, was renewed on this date shown here, July 7th.

Q. Yes.

A. With this note here, No. 22,343.

Q. All right, that is all. Mr. Garrett, I ask you whether you are familiar with both the old and the new minute books of the bank, the old minute book being Government's Exhibit No. 17; are you familiar with this book as a book of the bank?

A. Yes, sir, I am.

Q. And that was a book of the bank during the time that you were employed there, a record of the bank?

A. Let's see those dates? Yes, sir, it was.

Mr. Dodds: I ask to read in evidence at this time the unnumbered printed pages following page 30 in Government's Exhibit No. 17, being the earlier minute book of the bank—by-laws of the bank.

The Court: You can select such parts as you think necessary to read.

Mr. Dodds: Yes, if your honor please.

The Court: And consider it all as read.

Mr. Dodds: I read from the minute book of the bank, the by-laws of the bank, as follows:

Mr. Davidson: If your honor please, we desire to interpose an objection to this on the ground that it is immaterial and does not tend to prove or disprove any material issue of fact in the case. I don't see where it can be material in this case at all.

The Court: You may read it.

Mr. Davidson: Note an exception.

Mr. Dodds: This is headed "Treasury Department, Office of the Comptroller of the Currency, Original Form 2,054, General form of by-laws of National Bank.

"By-laws of the Liberty National Bank of Tulsa, Oklahoma, organized under the national banking laws of the United States."

Now, I——

"The regular annual meeting of the shareholders of this bank for the election of directors shall be held at its banking house on the second Tuesday of January of each year, between the hours of ten and four of said date; it shall be the duty of the board of directors, within a month prior to the time of said election, to appoint three shareholders to act as judges of the election, who shall hold and conduct the same, etc."

Made the provision for an annual meeting. I turn to that part of the by-laws on the second page, the page designated page 2 thereof, a portion under paragraph headed, "Directors' Meetings."

"Section 14. The regular meetings of the board of directors shall be held on the first Tuesday of each month. When any regular meeting of the board of directors falls upon a holiday the meeting shall be held upon such other day as the board may previously designate. Special meetings may be called by the president, cashier, or at the request of three or more directors."

The next paragraph, headed "Discount Committee."

"Section 15. There shall be a committee to be known as the discount committee, consisting of the president, cashier, and one director, appointed by the board every twelve months, to continue to act until succeeded, who shall have power to discount and purchase bills, notes and other evidences of debt, and to buy and sell bills of exchange; and who shall, at each regular meeting of the board of directors, submit in writing a report of all bills, notes and other evidences of debt discounted and purchased by them for the bank since their last report. The board of directors shall approve or disapprove the report of the discount committee, such action to be recorded in the minutes of the meeting."

The next item, headed "Minute Book":

"Section 16. The organization papers of this bank, the returns of the judges of the elections, the proceedings of all regular and special meetings of the directors and of the shareholders, the by-laws and any amendments thereto, and reports of the committees of directors shall be recorded in the minute book; and the minutes of each meeting shall be signed by the president and attested by the cashier."

These by-laws are duly executed by the different directors of the bank on the 13th day of September, 1912.

Q. Now, I ask you, Mr. Garrett, whether you ever—whether you ever have had any knowledgge, as an officer of the

bank and its vice-president, of there being any other by-laws than these that I have read and that are here in the minute book of the bank? A. Not to my knowledge, no.

Q. You never were notified or knew of any change in those by-laws? A. No.

Mr. Dodds: I turn to page 403. The pages of this minute book are not numbered consecutively. I turn to that page designated by the number 403, in Government's Exhibit No. 17, and offer in evidence the minutes of the meeting of the board of directors of November 23, 1918.

Mr. Davidson: The defendants each object to the exhibit offered for the reason that it is immaterial, and does not prove or tend to prove any material fact or circumstance in the case, and as wholly beside any issue in the case. Now, the portion of that, the material part that he speaks of offering there, is a statement from a letter from the directors, in 1918, to the Comptroller of the Currency, that is set out at large upon the minutes of the meeting of that day.

The Court: I can hardly tell, without knowing what it is.

Mr. Dodds: It is offered for this purpose, if your honor please: That it is a statement on the part of the directors, in the letter to the Comptroller of that date, that the—stating the expense account should be examined at stated intervals by the directors and their approval of the expense account should be noted on the minutes of the directors' meeting; that that communication was made by the directors of the bank themselves to the Comptroller of the Currency, recognizing the fact that they should make that entry of the examination of the expense account.

The Court: How did it come to be recorded in the minute book?

Mr. Dodds: It was recorded in the minute book, if your honor please, as a copy of the letter to the Comptroller of the Currency forwarded by the directors and signed by them.

The Court: Well, were they complaining that this was not done?

Mr. Dodds: Apparently, if your honor please, the directors had been criticized, apparently, by the Comptroller of the Currency, and were making these statements to

show that they knew what they had been criticized for and what they were going to do in the future.

Mr. Davidson: There is not a thing in the world that shows that any criticism of that kind had been made.

The Court: I suppose that the Oklahoma law required this to be done?

Mr. Dodds: Yes, it did require it to be done.

The Court: I do not see that it is going to be very material, in the shape it is in.

Mr. Dodds: Well, I will just withdraw the offer.

Cross Examination by Mr. Davidson.

Q. Mr. Garrett, as vice-president of the bank, it was your duty, a part of your duty when calls for reports came from the Comptroller of the Currency, to make up a copy of the report in pencil? A. Yes, sir.

Q. And then you gave that copy, with pencil notations, to the stenographer to type it and prepare it [] final form to be sent to the Comptroller of the Currency?

A. Well, I make it up in pencil and then it would be checked over by Mr. Lewis and then go to the stenographer to be copied.

Q. The typewriting of it was done by a stenographer?

A. Yes, sir.

Q. You did not yourself make the entries in the final report that went to the Comptroller of the Currency, did you? The actual making of the entry, that was done by the stenographer? A. Yes, sir.

Q. In the copy that went to the Comptroller of the Currency? A. Yes, sir.

Q. And she made that from a pencil copy that you had made? A. Yes, sir.

Q. Now, in getting the information for the item of $1,286,531 70, shown as loans and discounts in Government's Exhibit No. 41, that was taken from the bank's books, wasn't it?

A. Yes, sir.

Q. Which one of the books would you go to for that information? A. That would come out of the general ledger.

Q. That would come out of the general ledger on that date? A. Yes, sir.

Q. As of the date the report shows the condition of the bank at the close of business? A. Yes, sir.

Q. Mr. Garrett, the books of the bank, and all the books of the bank on April 3, 1923, show the loans and discounts in exactly the same amount as shown in this report to the Comptroller of the Currency, didn't they? A. Which is that?

Q. That is in the report, the condition of April 3, 1923, which is Government's Exhibit 41?

A. You mean this shows the same?

Q. As the books? A. Yes, sir.

Q. Exactly? A. Yes, sir.

Q. And the bank did hold and had in its possession and owned on April 3, 1923, loans and discounts to exactly that amount, didn't it? A. Yes, sir.

Q. That was a true and correct item taken from the books of the bank, wasn't it? A. Yes, sir, the total shown.

Q. Now, what other books of the bank besides the ledger would show the amount of the loans and discounts on that date? A. Show the total?

Q. Yes.

A. There wouldn't be what you would say a grand total shown any place else.

Q. The ledger just shows the grand total? A. Yes, sir.

Q. Where would the items making up that grand total appear? A. It would show on the discount register.

Q. On the discount register? A. Yes, sir.

Q. And there were other clerks in the bank that took the total each day of the separate items shown in the discount register and entered them upon the general ledger under the total amount of loans and discounts, didn't they?

A. You mean each day's transaction?

Q. What I want to know, you say the total loans and discounts entered in the ledger arrived at each day?

A. They would just go into the little book called the blotter, any new note would be entered in there first, then numerically numbered and run into the discount register each day.

Q. Now, just a moment. The blotter shows only each day the notes discounted on that day, doesn't it? A. Yes, sir.

Q. It likewise shows the notes paid on that day, doesn't it? A. Yes, sir.

Q. It likewise shows any partial payments on that day, doesn't it? A. Yes, sir.

Q. In making this general total of loans and discounts each day, you took the total of loans and discounts of the day before and correct it by what transactions appeared on the blotter that day?

A. Yes, sir, you take the previous total and either add or subtract, which ever it may be.

Q. And that is the way it would be arrived at?

A. Yes, sir.

Q. Now, this blotter on that Kittess' note, you mentioned a while ago, the only place it appears in here is when it was discounted, was it?

A. Yes, sir, first appears in the blotter when discounted and then again appears in the discount register.

Q. Now, this Kittess' note which is Government's Exhibit No. 66, made December 18, 1922, would appear in your blotter as of December 18, 1922, as a discount, wouldn't it?

A. Yes, sir, the date of the note there.

Q. Yes, the date of the note? A. Yes, sir.

Q. That note wouldn't appear in the blotter any more until it was either renewed or something paid on it, would it?

A. No.

Q. Now, when that note was renewed on July 2, 1923, it appeared again in the blotter on that date as a discount note, didn't it? A. Yes, sir.

Q. And on that same day in the blotter appeared the old note which was marked off and the new note went up on the blotter that day? A. Yes, sir.

Q. Now, when a note was discounted and it went into the blotter what other books of the bank did it go into?

A. It would go into the blotter and then into the discount register as the notes themselves, and that is all.

Q. And then it went into the note case, didn't it?

A. Into the note case, yes, sir.

Q. It also went into the liability ledger, didn't it?

A. I wouldn't say whether right at that time we had a liability register. I don't remember just when that was installed.

Q. After it was installed now, each note that was discounted also went into the liability ledger? A. Yes, sir.

Q. Now, that liability ledger was installed before 1923, wasn't it? A. I believe it was.

Q. It was in existence at the time these transactions took place? A. Yes, sir.

Q. Now, on this Ballard note and Koons' note, Government's Exhibit 44, which is note of R. A. Koons to the Liberty National Bank for $29,000.00, dated December 22, 1922; now this note took the same course in the books of the bank that the Kittess' note did with the exception as to the date, didn't it? A. Yes, sir.

Q. On the 22nd of December, 1922, it went into the blotter as a discounted note? A. Yes, sir.

Q. And your blotter shows that note, doesn't it, Mr. Garrett? A. Yes, sir.

Q. That note was never renewed, was it, your books in the bank doesn't show that note was ever renewed, does it?

A. Well, I couldn't say.

Q. And from the blotter it went into the discount register then to the liability ledger and then to the note case?

A. Yes, sir.

Q. The same is true with reference to the A. M. Ballard note which is Government's Exhibit No. 45 for $21,750.00, dated December 29, 1922? A. Yes, sir, that would be the same.

Q. Now, Mr. Garrett, when a payment was made on a note, for instance, on this Ballard note, and endorsed on the back of it, that payment would show in your blotter, wouldn't it? A. Yes, sir.

Q. And that note then would go into your other books of the bank and enter into the total of the loans and discounts at its face less the amount that was paid on it, wouldn't it?

A. Well, the record, that is the discount register, would not be changed as to the note. The credit made on the blotter would be applied to this, would not be changed.

Q. But the amount of this note as it went into the general total of loans and discounts, less the credit on it?

A. Yes, sir, less the credit.

Q. On this report of the condition of the bank on April 3, 1923, this Ballard note went in at the face of it of $21,750.00, less $950.00 credit on the back of it, didn't it?

A. Yes, sir.

Q. And the Koons' note went in at the face value of $29,200.00, less the $200.00 payment endorsed on the back of it?

A. Yes, sir.

Q. Now, Mr. Garrett, in this report of the condition of the bank of June 30, 1923, which is Government's Exhibit No. 43, the item of $2,074,216.12, which is the total of loans and discounts as of that date was taken from the books of the bank in the same way as the items in the Government's Exhibit No. 41? A. Yes, sir.

Q. And it was a true statement of the amount of loans and discounts of the bank on that date, wasn't it?

A. Well, that is a true statement of the total.

Q. That is a true statement of what the books showed, wasn't it? A. Yes, sir, of what the books showed.

Q. And all the books of the bank, the blotter, the discount register and the liability ledger as well as the general ledger, all showed those notes making up that grand total of $2,074,216.12, didn't it? A. Yes, sir.

Q. Now, that was true of the report of September 14, 1923, in which the loans and discounts here listed in the report to the Comptroller of the Currency, Government's Exhibit 42, is $2,106,039.51? A. Yes, sir.

Q. You took that item from the books of the bank?

A. Yes, sir.

Q. And it was a true and correct amount of loans and

discounts of the bank as shown by its books of that date, wasn't it? A. Yes, sir.

Q. The entries in each one of these Government's Exhibits 41, 42 and 43 were made by the stenographer in the reports that were finally sent to the Comptroller of the Currency? A. Yes, sir.

Q. Who was that stenographer?

A. Well, we had two or three different ones; that is at different times. I don't recall just who made these particular statements. I couldn't say; I rather think a lady, Miss Rouse.

Q. You don't have any independent recollection now who it was? A. No.

Q. And you have no independent recollection now as to these three particular reports to the Comptroller of the Currency, what was done with them or what happened pertaining to them, other than what was ordinarily and customarily done in the making out of these reports, do you?

A. Well, I don't recall anything unusual that happened to them, or anything like that.

Q. Just a moment. Mr. Garrett, all of these books of the bank, the blotter, the discount register, the liability register, and the note case were open and accessible to you at all times for the making up of these reports to the Comptroller of the Currency, weren't they? A. Yes, sir.

Q. And you used them in making up your reports to the Comptroller of the Currency?

A. Well, now, it was not necessary to use all of those in making up those reports. The general ledger, the final posting book of the accounting of the bank, contained all of those totals and items—accounts in our assets and liabilities. This would be made up from that general ledger. It is not necessary to go through the blotter, etc.

Q. In other words, you just went to one book, and got the information that went into these reports? A. Yes.

Q. That information could have been verified by you from an examination of the other books, couldn't it?

A. Oh, yes, or anybody else in the bank.

Q. Mr. Garrett, you are acquainted with the signature of A. E. Lewis, are you not? A. Yes.

Q. You are likewise acquainted with the signature of W. L. Lewis, aren't you? A. I am.

Q. You are acquainted with the signature of E. A. Ross, aren't you? A. Yes, sir.

Q. And have been for some time? A. Yes, sir.

Q. I hand you Government's Exhibit No. 36, and ask you to examine the signature of E. A. Ross, as shown on that

page, and state whether or not that is his signature—on page 17 of the minute book, Government's Exhibit No. 36?

Mr. Dodds: It is admitted that that is Mr. Ross' genuine signature.

A. Yes, that is his signature.

Q. I will ask you as to the signature of E. A. Ross, on page 19; is that his signature? A. Yes, I would say it was.

Q. I will ask you if the signature on page 21 is that of E. A. Ross? A. Yes, sir.

Q. I will ask you as to the signature of E. A. Ross, on page 23; is that his signature?

A. That is a little different. Well, I don't think that is his.

Q. You don't think that is his? Is that in the handwriting of A. E. Lewis? A. It looks similar; I could not say.

Q. Is that in the handwriting of W. L. Lewis?

A. I would not say it was W. L.'s.

Q. You think it looks similar to A. E.'s handwriting?

A. Well, there is a resemblance in the writing.

Q. Do you know Mr. Lamprich's handwriting?

A. Yes, sir.

Q. Is that in his handwriting?

A. I would not say it was his writing, but it looks like his writing—looks like Mr. Lewis'.

Q. Looks like both of them? A. Yes.

Q. You could not say which it is?

A. No, I would not say.

Q. I will ask you as to the signature of E. A. Ross on page 25; is that Mr. Ross' signature?

A. No, I don't think it is; I don't think it is.

Q. Whose handwriting is that in, if you know?

A. It looks about the same as this one over here.

Q. Uh-huh.

A. It looks to be the same there.

Q. As the one just preceding it? A. Yes.

Q. I will ask you if the signature of E. A. Ross, on page 27, is the genuine signature of E. A. Ross? A. No, that is not.

Q. That is not? A. No, sir.

Q. Do you know whose handwriting that is in?

A. Yes, I rather think I do; that looks more like Mr. Lamprich's writing.

Q. Looks more like Lamprich's writing?

A. Yes, looks like his writing there.

Q. I will ask you to look at the signature of E. A. Ross, on page 29; is that his genuine signature? A. No.

Q. Whose handwriting is that in?

A. That looks like Mr. Lamprich's.

Q. I will ask you, on page 33, the signature of E. A. Ross; is that his genuine signature? A. Yes.

Q. On page 39, is that the signature of E. A. Ross. A. No.

Q. Whose is it? A. That looks like Lamprich's.

Q. I will ask you if, on page 44, if the signature of E. A. Ross is his genuine signature? A. I think it is.

Q. All right; all right.

The Court: Is that all?

Mr. Davidson: Just a moment, if your honor please.

Q. Did you ever attend a meeting of the stockholders of the Liberty National Bank? A. Not that I remember.

Q. Were you present at the annual meeting of the stockholders of the Liberty National Bank, on January 8th, 1924?

A. What date was that?

Q. January 8th, 1924. A. Liberty National Bank?

Q. Yes. A. No.

Mr. Dodds: Just a moment, if your honor please; I can't see how that would be material; that is a stockholders' meeting held after the closing of the bank, not a thing to do with this case—after liquidation.

The Court: Well, it might be for the purpose of refreshing his memory; I don't know.

Mr. Davidson: If your honor please, the purpose of this is, this was a meeting held January 8th, 1924, in which Mr. Garrett was not present, as a matter of fact, but the minutes are written up and signed and he signed the minutes just like they had been done before, and this was done at the direction of the bank examiners in regard to the liquidation of the Liberty National Bank, after it had sold all of its assets to the Security.

Mr. Dodds: May I ask counsel if he means that Mr. Garrett's name was put in there at the request of the bank examiner? Is that what you mean?

Mr. Davidson: I say he signed the certificate of the minutes of a meeting of the stockholders at which he was not present.

Mr. Dodds: Well, but do you claim that his name appears—suppose he did; do you claim his name appears there as one being present?

Mr. Davidson: I do not say that it does.

Mr. Dodds: Well, then, I can't see how it would be material.

Mr. Davidson: But he signed the minutes.

The Court: Oh, I can't see that that—I thought per-

haps you were doing this for the purpose of refreshing his memory.

Mr. Davidson: No, it is not for that purpose.

The Court: I can't see that it is material.

Mr. Davidson: All right.

The Court: Stand down.

Mr. Dodds: Just a moment.

Redirect Examination by Mr. Dodds.

Q. Mr. Garrett, I hand you here Government's Exhibit No. 54, A, B, C, D, E, F, G, H, I and J, and call to your attention the fact that they are checks drawn to the order of the Liberty National Bank by Roy A. Koons, marked "Payment" —in some instances—in most instances marked "Payment on note." Now, I ask you whether, if those checks had been properly credited to the note on which they were paid, the amount —the gross amount of the checks would have been deducted from the loans and discounts in these three reports?

Mr. Davidson: To which the defendants each object for the reason it is incompetent, calls for a conclusion of the witness as to whether they were properly paid or not, and the only thing they can do is to show from the books of the bank whether or not these payments were entered on the books of the bank.

Mr. Dodds: All right, I will; it will take a long time to show it on each check, but I will do it.

The Court: Let him take the book; let him examine, and then come and testify as to whether it shows or not.

Mr. Dodds: Yes, all right.

The Court: Don't take the time now.

By Mr. Dodds:

Q. Mr. Garrett, I will ask you to take this blotter and—is that the only book you will need to determine whether the credit was made for the payment——

A. These are payments on the notes?

Q. Payments on notes.

A. I want the checks and the blotter and the notes

Q. Those are the checks and that is the blotter, and give me the two notes, please. A. And the discount register.

Mr. Dodds: I will ask that the next witness be called.

Q. Now, what I want you to tell us is whether the payments represented by these checks were actually credited so that they are deducted from the loans and discounts of the bank in these three exhibits. A. I see.

Q. Yes.

A. May be I had better have the discount register.

The Court: Next witness. Examine.

A. R. MITCHELL

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. You reside at Tulsa? A. Yes, sir.

Q. In business there? A. Yes, sir.

Q. What is your business, please? A. Oil business.

Q. What is it? A. Oil business.

Q. Now, Mr. Mitchell, did you have occasion to do any financial business with the Liberty National Bank of Tulsa during the last couple of years that it was in existence?

A. Well, I did with Mr. Lloyd Lewis, personally.

Q. With Mr. Lloyd Lewis personally? A. Yes, sir.

Q. All right. Now, what was the nature of the business transaction that you had with Mr. Lloyd Lewis—just as shortly as you can make it.

A. He held some notes of mine, to the extent of about $31,000.

Q. Yes. And these were notes that went to him personally, as you remember? A. Yes, sir.

Q. Now, I ask you whether or not those notes were in payment for certain property that you purchased from him?

A. Yes, sir.

Q. And whether or not you had occasion to call upon somebody else, some third party, to secure a part of the amount represented by those notes in some manner?

Mr. Davidson: If your honor please, I hate to keep objecting this way, but he keeps on suggesting to the witness the answer he wants. Now, the question is whether or not this was a discounted note—original discounted note to the bank, or whether it was put up as collateral behind another note, and he is asking this witness now about securing another note.

The Court: Well, it is leading, but let's get along.

Mr. Davidson: Note an exception.

Q. Now, Mr. Mitchell, what security was placed behind your thirty thousand dollar, or so, of indebtedness during the last year that the bank was in operation?

A. Well, there wasn't any securities placed behind the

thirty thousand dollar indebtedness. After I made some new notes in December, I think it was 1922, or November I guess it was, I made one note to the bank for $13,600.

Q. Yes, now that—was that note secured?

A. Not at the time it was made.

Q. Was it secured later? A. Yes, sir.

Q. You say—how was it later secured?

A. By a note signed by Mason Kittess.

Q. And at whose request was the note signed by Mason Kittess executed? A. Mr. Lewis.

Q. And who is Mason Kittess, was he in business with you, or any connection with you?

A. Well, he wasn't in business with me. I knew him quite well; he was a lease broker in Tulsa.

Q How did he come to execute a note securing yours?

A. Well, I asked him to do it.

Q And asked him at whose request? A. Mr. Lewis'.

Q. And do you remember the amount of the note that he executed? A. $15,000.00.

Q. And that was left there, and to whom was it executed, as you understand the matter?

A. I think it was made to the bank, the Liberty National Bank.

Q. I show you Government's Exhibit No. 67, your name typewritten thereon; I ask you whether or not that is any document with which you are familiar?

A. I never did see that before.

Q. Did you ever send a telegram of that kind?

A. No, sir.

Mr. Dodds: Government's Exhibit No. 67 is offered in evidence relating to this transaction of having Mr. Kittess sign the note.

Mr. Davidson: The defendants each object to the Exhibit No. 67 because it is immaterial and has no bearing upon any material fact or issue in this case. The witness himself says he didn't sign it, and knows nothing about it.

Mr. Dodds: We will have to connect it, which we will do, if your honor please. I might say, the point we want to show is the witness didn't send it and didn't sign it.

Mr. Davidson: Not competent here unless they show we were connected with it in some way.

The Court: That is true, unless it is connected up and straightened out. Unless they show you did sign it and send it, I will strike it out.

Mr. Davidson: If your honor please, you know when a thing goes to the jury, you cannot strike it out of their minds.

Mr. Dodds: We will withdraw the offer from the jury at the present.

The Court: Very well.

Q. Mr. Mitchell, by the way, have you that note?
A. No, sir.
Q. Do you know where it is? A. No, sir.
Q. Did you ever receive it back at any time? A. No, sir.
Q. To whom was that note made payable?
A. To the Liberty National Bank.
Q. That is the note for $13,000.00? A. Yes, sir.
Q. Do you know who endorsed it, if anybody? A. No one.
Q. It was made directly to the bank itself?
A. That is my understanding, Mr. Dodds.
Q. Whether it was endorsed or not, have you any knowledge as to whether it was endorsed or not? A. I have not.

Mr. Dodds: That is all; you may take the witness.

Cross Examination by Mr. Davidson.

Q. Mr. Mitchell, the aggregate amount of the note that you originally gave W. I. Lewis was $31,500.00, wasn't it?
A. I think so, yes, sir.
Q. There was $25,000.00 of that on the real property and $6,000.00 on furniture?
A. No, $27,000.00 on real property.
Q. And $4,000.00 on furniture? A. Yes, sir.
Q. Now, those notes were changed from time to time and renewed? A. Yes, sir.
Q. Now, those notes were all made payable to W. I. Lewis, weren't they? A. Yes, sir.
Q. And somewhere in the transaction from there down the line there was one note of $13,000.00 made?
A. Yes, sir, I renewed all those notes and made out new notes in November, 1922.
Q. When did the original transaction take place?
A. In 1921.
Q. And in November, 1922, is when you made this note of $13,000.00? A. Yes, sir.
Q. Now, wasn't that made payable to W. I. Lewis?
A. Well, I was under the impression, Mr. Davidson, it was made to the bank.
Q. Made to the bank, you think payable to the Liberty National Bank? A. Yes, sir.
Q. I will ask you if the Liberty National Bank wasn't

insisting, that is through Mr. W. L. Lewis, upon the payment of that $13,600.00 note by you?

A. It was just about three weeks old.

Q. Three weeks old when?

A. When Kittess signed this other note.

Q. When Kittess signed the other note? A. Yes, sir.

Q. That note, however, at that time had no security behind it, did it? A. Well, it had the property.

Q. Was the property mortgaged to secure that?

A. Sure.

Q. To whom was it mortgaged? A. To W. L. Lewis.

Q. It wasn't mortgaged to the bank then? A. No, sir.

Q. It was mortgaged to W. L. Lewis? A. Yes, sir.

Q. Now, W. L. Lewis, didn't know Mason Kittess, did he, up to the time that you introduced him to him?

A. I don't think he did.

Q. He never heard of him, had he? A. I don't know.

Q. I will ask you if Mr. Lewis hadn't advised you prior to the date that Mason Kittess made this note that your note to the bank of $13,600.00 had been criticised and that the National Bank Examiner had told him he would have to get it out of the bank? A. No.

Q. Hadn't told you that? A. No, sir.

Q. Didn't you in response to that go to Pawnee to try to get some money from your relatives to pay it?

A. No, I tried to get someone to sign a note.

Q. To take up your note?

A. No, as additional security for my note.

Q. Why were you doing that?

A. Because Mr. Lewis asked me to. He had been very nice to me and asked me to have someone sign a note for additional security, which I did.

Q. And you tried to get some of your relatives to do it?

A. I tried to get my brother-in-law to do it.

Q. Didn't you tell Mr. Lewis that you were going over to Pawnee to get your brother or one of your relatives over there to carry this note at Pawnee for you? A. No, sir.

Q. And any rate you went over there and didn't get any help over there, did you? A. No, sir.

Q. You then went to Mr. Kittess, didn't you?

A. Well, I didn't go to Mr. Kittess, Mr. Kittess went in the bank with me and heard the conversation between Mr. Lewis and me, and said he would sign the note and I told Mr. Lewis about it, and he said bring Kittess in there.

Q. How long had you known Kittess at that time?

A. About three years.

Q. What business was Kittess engaged in?

A. In the oil lease business.

Q. And you saw him frequently about the Tulsa Hotel at night, didn't you? A. Yes, sir.

Q. And you were in company with him frequently?

A. Well, not frequently.

Q. He was a friend of yours? A. Yes, sir.

Q. And he wasn't acquainted with Mr. Lewis prior to the date this note was made? A. He says he wasn't.

Q. How did he happen to go into the bank with you?

A. Well, he and I were going somewhere and went by the bank, and Mr. Lewis called me inside, and he stepped inside and heard the conversation.

Q. Did not Kittess stay outside? A. No, sir.

Q. Didn't you, after your talk with Lloyd Lewis, and Kittess said he would execute his note to the bank, didn't you go out then and call Kittess in?

A. No; not then. I saw Kittess in the hotel lobby.

Q. When with reference to the execution of this note?

A. The next day, possibly two days after.

Q. After the execution of the note?

A. No, after the time he went in the bank with me and heard the conversation.

Q. This note wasn't executed the first time Kittess was in the bank?

A. No, it was executed the first time Mr. Lewis met Kittess in the bank. Mr. Lewis called me in the bank the first time, but he didn't meet Kittess at that time.

Q. Mr. Lewis was there then? A. Yes, sir.

Q. And that was the first time Kittess had been in the bank with you?

A. The first time that he was in there with me that I knew of.

Q. Now, what was the conversation between you and Mr. W. L. Lewis, when he called you in there, as you say?

A. He asked me if I had anyone to sign the note yet and I told him no.

Q. Then what did he say?

A. I don't remember what he said.

Q. Did the conversation end then?

A. I don't remember whether it did or not. I don't suppose it did, but I don't remember exactly what he said.

Q. Well, where did Kittess come in?

A. Well, I don't know just what you mean by where he come in.

Q. Kittess wasn't engaged in the conversation then?

A. No, sir.

Q. You hadn't mentioned it to him about signing your note? A. No, sir.

Q. And you hadn't introduced him to Lloyd Lewis then?

A. No, sir.

Q. Where did you first mention it to Kittess about signing your note?

A. After we got back to the hotel, Kittess said he would sign the note and I told Lloyd Lewis about it, and he said bring him down there. I don't remember whether I took Kittess down there or he went down there himself.

Q. You went back to the hotel with Kittess?

A. I don't remember whether I went back to the hotel with Kittess but the note was sent to Kittess that day.

Q. When did Kittess tell you he would make this note for you? A. The same day he was in the bank with me.

Q. And he told you that at the hotel? A. Yes, sir.

Q. And then at some subsequent date, you and Kittess went back to make the note?

A. Yes, sir, but I talked to Mr. Lewis in the meantime.

Q. And he told you then to bring him in, didn't he?

A. Yes, sir,

Q. And you did bring him in? A. Yes, sir.

Q. And he made this note for $15,000.00? A. Yes, sir.

Q. When Kittess went in there at the time the note was made, you introduced Kittess to Lewis, didn't you?

A. Yes, sir.

Q. W. L. Lewis made some inquiries of him about what properties he had, didn't he?

A. Of Kittess or me?

Q. Of Kittess? A. I don't know, I suppose he did.

Q. He asked you about what property Kittess had, didn't he? A. Yes, sir.

Q. And you told him, did you?

A. No, sir; I told him I didn't know what properties Kittess had, because I didn't know.

Q. Then when you and Kittess came in there, he inquired of Kittess about what property Kittess had, didn't he? A. I think so.

Q. And Kittess told him, didn't he?

A. I remember him telling him he had some leases and one thing and another.

Q. Told him he had some property in Kansas City, didn't he?

A. I don't remember about Kansas City. I remember about some leases in Love County, and an interest in a well drilling and an interest in about 2,500 acres.

Q. Told him he had a net worth of over $100,000.00?

A. I don't remember that, no, sir.

Q. He did tell him how much the stuff was worth, didn't he? A. I don't remember that.

Q. At any rate, the note of $15,000.00 was signed by Kittess in your presence, and delivered to the bank?

A. Yes, sir.

Q. And a financial statement was made out at that time by Kittess, wasn't it? A. Yes, sir.

Q. And that was delivered to the bank? A. Yes, sir.

Q. You saw Kittess sign the financial statement, didn't you? A. Yes, sir.

Q. Did you see what was in the statement? A. No, sir.

Q. Now, then, there was a cashier's check for $15,000.00, made by the Liberty National Bank, payable to your order, at that time, wasn't there?

A. Yes, sir, I guess it was made at that time.

Q. Well, you saw it, didn't you?

A. I saw it when I endorsed it the next day.

Q. Did you see it on that day the note was signed?

A. No, sir.

Q. When did you see it, the next day?

A. I saw it when I endorsed it.

Q. How did you happen to endorse it?

A. Mr. Lewis asked me to.

Q. How did you happen to be in the bank?

A. He sent for me.

Q. Whom did he send by for you?

A. It was either Lamprich or Garret; I have forgotten now.

Q. And that was the next day, was it? A. Yes, sir.

Q. Now, whoever came after you the next day had been down to the hotel the day before, the night before, looking for you, hadn't he? A. I don't know.

Q. You were advised of that fact down there, that he was down there that night, weren't you?

A. I don't remember; that has been three years ago, Mr. Davidson and I can't remember.

Q. Well, do you remember or not? A. No, I don't.

Q. But at any rate, they did find you the next morning?

A. Found me the next day, I think it was.

Q. And, I hand you Defendants' Exhibit No. 24, and ask you to examine it and state whether or not that is the cashier's check that you have reference to? A. Yes, sir.

Q. That is your signature, endorsement on the back of it? A. Yes, sir.

Q. Now, Mr. Mitchell, you were present in the bank during all the times that Kittess was there, at the time the Kittess note was made to the bank, weren't you? A. Yes, sir.

Q. You heard everything that transpired and took place there between Kittess and——

A. Well, I don't say that I heard everything; I heard the conversation pertaining to the signing of the note.

Q. Yes. Well you were present there, and Kittess came in with you and went out with you, didn't he?

A. Yes, sir—no, he didn't go out with me the day he signed the note. I left him talking with Mr. Lewis.

Q. You left him talking with Mr. Lewis?

A. I left him there, working with his financial statement.

Q. I thought you said he signed it before you went out?

A. He probably did—he did sign it before I went out, but Mr. Lewis called him back.

Q. Now, then, you were there when he executed the note, weren't you? A. Yes, sir.

Q. Now, when this cashier's check of $15,000 was presented to you on the following day by Mr. Lewis, W. L. Lewis, you endorsed it, didn't you? A. Yes, sir.

Q. And turned it back to the bank?

A. Well, I never had it in my possession; he just simply handed it to me to endorse.

Q. And you endorsed it? A. I did.

Q. Did any conversation take place between you at that time? A. Yes, sir.

Q. What was it?

A. He told me that that was too much of a load for him to carry and he was turning some of my notes in for cash.

Q. Turning some of your notes in for cash. Did he tell you this was the proceeds of the Kittess note? A. No, sir.

Q. He did not? A. No, sir.

Q. Well, now, did you get any of your notes? A. No, sir.

Q. Back when you signed this? A. No, sir.

Q. Did you ask for them? A. Yes, sir.

Q. Did he give them back to you?

A. I did not ask for them, because my notes were still—he was just merely being secured by this Kittess note, and so I could not expect it back.

Q. Well, what did you understand that you were being paid $15,000 for by the bank?

A. I was not being paid $15,000; I never got one cent of that.

Q. What did you understand this transaction was for?

A. I understood, just as I told you at Hugo and at Muskogee and just a few minutes ago.

Q. Well, what was it?

A. That Mr. Lewis said that he was turning in some of those notes for cash; it was too much of a load for him to

carry, which I did not doubt in the least but what it was true, as he had $31,000 of my notes.

Q. How could you figure out it was necessary for a cashier's check to be made payable to you for $15,000 in order to carry out that transaction?

A. I haven't the least idea.

Q. You haven't the least idea? A. No, sir.

Q. You did recognize that this was the same amount as the Kittess note, didn't you? A. Yes.

Q. It never occurred to you that there was any connection between the two? A. It never did, no.

Mr. Davidson: We offer in evidence, if your honor please, Defendants' Exhibit No. 24.

The Court: All right.

Mr. Davidson: Which is a cashier's check to A. R. Mitchell for $15,000, drawn by the Liberty National Bank, December 18, 1922, endorsed on the back by A. R. Mitchell.

The Court: Is that all.

Mr. Davidson: Just a moment, please. That is all, if your honor please.

The Court: Stand down.

Mr. Dodds: Just one question.

Redirect Examination by Mr. Dodds.

Q. Mr. Mitchell, you testified here a while ago that your note that Mr. Kittess secured was for $13,600?

A. Yes, sir.

Q. And he put up a $15,000 note as collateral security to that note? A. Yes, sir.

Q. And I notice that this draft is drawn in the sum of $15,000 instead of $13,600, the amount of your note?

A. Yes, sir.

Q. Did you ever know what became of the other $1,400 on this? A. No, sir.

Q. Did you ever get it? A. No, sir.

Q. Did you ever get anything at all in the way of cash or anything of that kind out of the whole transaction?

A. No, sir.

Mr. Dodds: That is all.

The Court: Stand down.

Mr. Davidson: Wait a minute, just a moment.

Cross Examination by Mr. Davidson.

Q. Didn't you owe Mr. Lewis another note in the sum of $1,400? A. No, sir.

Q. About $1,500? A. No, sir.

Q. You did not? A. Not that I know of.

Q. Wasn't that note given for the difference between the mechanics liens when they figured out on the original sale of the house? A. Mechanics liens?

Q. Yes. A. Never heard of such a thing.

Q. Now, this transaction originally took place in an exchange of property between you and Mr. Lewis, didn't it?

A. It began that way, yes, sir.

Q. And you had built a house and there was a lot of mechanics liens against it, wasn't there?

A. Well, there were one or two mechanics liens but there were a lot of bills against it that were not mechanics liens.

Q. Well, there was some mechanics liens, weren't there?

A. Perhaps.

Q. The total amount of that was—— A. $27,000.

Q. $27,000, wasn't it?

A. Yes, and I sold Mr. Lewis that house for the amount of indebtedness against it, which was $27,000.

Q. He assumed all the indebtedness against it and you gave him your notes? A. No, sir, I gave him my house.

Q. How is that? A. I gave him my house.

Q. And also your notes, too, didn't you?

A. I made my notes to him after I purchased his house.

Q. Well, his house had an encumbrance against it?

A. No encumbrance against it. He promised if I would sell him my house for the amount of indebtedness against it, he would sell his house for that same amount and take my notes for it.

Q. When you figured up, there was a difference of about $1,500 on the mechanics liens? A. No, sir.

Q. You made your note to Mr. Lewis for that amount, didn't you? A. No, sir.

Q. You did not?

A. No, sir, I made my note for the amount of $31,000.

Q. And that included a note of $1,500?

A. That included $4,000 for his furniture and $27,000 for his house.

Q. How many notes were there?

A. There were four, I believe.

Q. And what amounts were they?

A. I can't remember, off-hand.

Q. Wasn't one of them $1,500? A. No, sir.

Q. It was not?

A. I think the smallest note was $2,000 and the next was $5,000.

Q. Wasn't there three notes that figured up $30,000 and one note for $1,500?

A. It doesn't matter what the amounts of the notes were, Mr. Davidson. The whole sum was a total of $27,000 for the house.

Q. What I wanted to know Mr. Mitchell, was there one note of $1,500, or not? A. I see.

Q. Was there or not? A. I don't remember.

Mr. Davidson: That is all.

MASON KITTESS

was called as a witness on behalf of the Government, and having been previously duly sworn testified as follows:

Direct Examination by Mr. Dodds.

Q. Where do you live?

A. 3312 Highland Avenue, Kansas City.

Q. What is your business, Mr. Kittess?

A. Oil business.

Q. Beg your pardon? A. Oil business.

Q. You are buying and selling oil leases? A. Yes, sir.

Q Such things as that. Now, Mr. Kittess, did you have occasion, during the year 1922, to make your note to the Liberty National Bank of Tulsa—I hand you Government's Exhibit No. 66. A. Yes, sir.

Q. That note, I ask you whether Government's Exhibit 35 that I now hand you was in renewal of that same note?

A. Yes, sir.

Q. Please state to the jury, Mr. Kittess, how you came to enter into that transaction and make your note to the Liberty National Bank of Tulsa, for $15,000?

The Court: Speak up, so the jury can hear you.

A. Why, Mr. Mitchell came to me and told me that his note of $15,000 was due and that he had to have additional collateral in order to get that renewal, so he asked me if I would sign the note and I told him that if they would accept my note that I would be glad to do it for him. So I came in the bank and he introduced me to W. L. Lewis, and Mr. Lewis told me that the bank examiners were raising hell, if you will excuse that expression, about Mr. Mitchell's note being in there so long, and that he had already talked to Mr. Mitchell and knew all about me and that it would be all right. I had never met Mr. Lewis before, only seeing him in the bank there.

I know him—just met him, and the whole transaction did not take ten minutes, never saw him before in my life, and he said, "Now, Mr. Kittess, you don't have to worry about this note," that you will never hear from it; it will be all right, and I will keep it in the note case on the desk, and that was all I heard about it, until they asked for the renewal, six months later, and I received a letter from Mr. Mitchell asking me—telling me that the bank examiners were coming again. The letter is in possession of Mr. Genau. And then I hesitated about six or seven days before I sent that renewal down and then I received a telegram and I didn't know just whether to send it down or not, but when I got this telegram, why I thought, "Well, I guess my friend is in trouble down there and wants a renewal," so I sent that renewal down and then tried to make an application—I made an application for a $2,500 loan, and I wrote a letter to the bank stating specifically what the $15,000 renewal was for, and also what I wanted with the $2,500, and then received an answer from W. L. Lewis stating that they were not making any outside loans, and then I never heard any more about the whole transaction until the bank closed—never heard any more about it.

Q. Now, Mr. Kittess, what, if any, representation was made to you by the defendants or either of them as to the purpose—use to which your $15,000 note would be put?

A. They said—he told me that my note was just to be used as additional collateral; that when the bank examiner would come that it would just strengthen Mr. Mitchell's standing and that the note would not be used—it would be used as additional collateral only and would be kept in that note case and note used for any other purpose.

Q. Now, you were asked at that time, Mr. Kittess, to make a financial statement?

A. Yes, sir, I was asked to make a financial statement, and I started to make it out—I wrote my own name, Mason Kittess, 106 West 5th Street, and then it said, "Business," and I wanted to put "oil broker" and when I got through with the "oil"—just writing the "oil", Mr. W. L. Lewis said to me, "Well, Kittess, you better let me make out that financial statement, and we exchanged seats and he sat down there and wrote that statement out in his own handwriting, and before I left, why, he said to me, "Well, Kittess, you had better sign this other statement on the other side," he says, "the girl is out to lunch, and when she comes back I will have her put it in on the typewriter so it will look neat, and I signed that one in blank.

Q. I hand you Government's Exhibit No. 68, Mr. Kittess, and ask you whether that is the one that you said you signed in blank?

A. Well, this is the one that I started to make out, and he took another statement and began filling it, but I did not sign a typewritten statement.

Q. Will you turn that statement over and see if your signature——

A. Yes, sir, this is the one that I signed on the other side.

Q Yes, but the typewriting was not in it at the time you signed it? A. No, sir—no, sir.

Mr. Dodds: Government offers Defendants' Exhibit No. 68 in evidence, being the Kittess financial statement.

The Court: Very well.

(Mr. Dodds starts to read Government's Exhibit No. 68 to the jury.)

Q. Cash on hand, in bank, $3,100. Did you have $3,100 on hand or in bank at that time?

A. No, sir—No, sir, it was $2,500.

Q. Where was that?

A. I had some in the Exchange National, some in the Security National, some in Wichita, some in Kansas City.

Q. I see. A one-eighth interest in one thousand acres with four drilling wells around some, and one-eighth interest in lease on 270 acres with well in the center? A. No.

Q. Did you have such property as that?

A. No, I will tell you what that was. That was not anything of any description that I gave, like it is read there.

Q. Yes.

A. I got this well drilled several miles north of Marietta, here in Love County, right southeast of this town on the Drahn farm, and I had an eighth interest in the well and owned several hundred acres, and I put a potential value of $10,000 for my interest in the leases and the interest in the well.

Q That was a speculative value, was it not?

A. Yes, sir, that is speculative.

Q. I notice here it is put in at $30,000?

A. No, that was not——

Q. Did you ever have anything to do with that sum being entered here? A. No, sir.

Q A one-sixteenth interest in 30,000 acres eight miles south of Meridian, Mississippi, $3,500?

A. No, sir, I had an eighth interest—I just put half of it down; I owned an eighth interest in 32,000 acres south of Meridian, Mississippi. I have those papers with me here.

Q. Was there any value on that?

A. Yes, sir, that was worth about $10,000, because the Sinclair Oil and Gas Company drilled three deep dry holes there, right adjoining this block, and there was about eight of us that owned it.

Q. Now, a house and lot at 3312 Highland Avenue, Kansas City, $17,000?

A. There has been a one placed in front of that seven. I did not value that at any such figure. I put down $7,500 value.

Q That is in the statement you wrote in your own handwriting? A. No, sir, I did not write the statement.

Q You say you put it down?

A. I started to make the statement, and he grabbed another statement and wrote it out in his own handwriting and made me sign this one in blank. I started to make this statement out.

Q. Yes, sir. You put the heading of it in?

A. Yes, sir, I put the heading in, and then he stopped me.

Q. In the statement you started to make out, you put that Kansas City property in at $7,000?

A. Yes, sir, $7,500.

Q. I notice total liabilities here of $15,500 in notes—bills and notes payable?

A. I did not put that in, sir. . ..

Q. Did you have any such liability as that?

A. No, sir.

Q. And I presume that may refer, I may say, to the $15,000 note? A. It must.

Q. That you made there at the bank. Giving you a net worth of $54,100? A. No, sir.

Q. Did you have any such net worth at that time, Mason?

A. No, sir, and that statement also shows accounts receivable there, $10,000, and I never had any ten thousand dollars accounts receivable.

The Court: Very well, let's get along.

Mr. Dodds: Just one moment, if your honor please.

Q. Mason, what was your net worth in your best estimate at the time that statement was made?

A. Well, sir, the way I was taken into the bank there, I could place it at $30,000.00. The actual acreage and interest and wells that I had and the cash I had on hand, I would call it $30,000.00 or $32,000.00.

Q. But that was putting a speculative value on your oil properties? A. Yes, sir.

Q I notice the signature of D. E. Mills here as a witness; do you know anything about Mr. Mills witnessing your signature to that?

A. No, sir, I never knew Mr. Mills in my life until I went to Tulsa in September, 1924, and went to see Mr. Genau about this matter, and that was the only time I had ever met Mr. Mills.

Q. Now, I ask you if you had occasion to write to the

Liberty National Bank at Tulsa concerning this matter on July 5, 1923? First, Mr. Kittess, did you know anything about your note having been actually discounted at the bank within a day or so of the time you gave it? A. No, sir.

Q. When did you first know that it had been discounted by the bank?

A. Well, sir, I didn't know anything about it. I don't believe I knew until we went to trial. I never knew they ever got the money on it. Wasn't supposed to be used for that; it was just supposed to be used for additional collateral as it was represented to me.

Q. Looking at Government's Exhibit 69, I will ask you what that is?

A. Well, sir, it is a letter I spoke of that I dated——

Q. That is a letter you wrote to the Liberty National Bank of Tulsa? A. Yes, sir.

Q. Your carbon of it?

A. Yes, sir, that is a carbon copy.

Mr. Davidson: The defendants object to Government's Exhibit 69 for the reason that it purports to be a carbon copy, or at least a copy of a letter, and is therefore not the best evidence, and for the further reason that it bears the date of July 5, 1923, which was long after the happening of the transaction concerning which the witness has been questioned.

The Court: To whom is the letter addressed?

Mr. Davidson: Addressed to the Liberty National Bank.

This copy purports to be.

Mr. Dodds: I might say this in connection with this matter, if your honor please.

The Court: I know, but is the original letter found among the records of the bank?

Mr. Dodds: We have been unable to find the original letter. This copy was brought to us by the witness and we have been unable to find the original letter.

The Court: Well, who knows that?

Mr. Dodds: I don't consider this of enough importance to go to the length of proving the search and all that, if my brother wants to object to it, I will let the matter stand as it is.

Mr. Davidson: We object.

Mr. Dodds: All right. That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Kittess, how long had you known A. R. Mitchell prior to the time you made this note to the Liberty National Bank the first time? A. About five or six years.

Q. Were you spending most of your time in and around Tulsa at that time? A. Yes, sir, most of the time.

Q. Your home, however, was in Kansas City, was it not?

A. Yes, sir.

Q. Prior to the day that you made this note of $15,000.00 to the Liberty National Bank, did you know W. L. Lewis or A. E. Lewis?

A. No, sir, I didn't even see either one of them. In fact, I didn't know who E. A. Lewis was and didn't know who he was until down at Hugo, and I asked somebody then who he was.

Q. About that time you were frequently around the lobby of the Tulsa Hotel, weren't you?

A. No, I wouldn't say frequently around there, not too much; I was in and out of town and of course that would be the center of activities around the hotel.

Q. You frequently met Mr. Mitchell around the hotel there, didn't you?

A. Well, sometimes I did; and sometimes in his office in the Kennedy Building.

Q. You had never been in the Liberty National Bank prior to the day you made this note for $15,000.00?

A. Yes, sir, I had.

Q. Had?

A. I went in there one time I sold a lease to Phillips Petroleum Company and went in there and collected a commission of $400.00.

Q. How long was that before you made this note?

A. I don't remember; it was a long time before that.

Q. Hadn't been in the bank the day before you made this note, had you?

A. No, sir. I had never been in there outside of the commission I collected.

Q. Where were you when Mr. Mitchell first mentioned to you this matter of your making your note to the bank for him? A. In the lobby of the Tulsa Hotel.

Q. At what time with reference to the date on which you made the note to the bank? A. You mean the time of the day?

Q. The time of the day and what day?

A. About fifteen minutes before we went into the bank.

Q. You went right from the hotel up to the bank?

A. He come up and got me and we went right into the bank.

Q. He discussed the matter with you at the hotel?

A. He told me what he wanted me to do.

Q. And then you went right straight on up to the bank to carry out the plan? A. Yes, sir.

Q. Now, when you got in the bank, who did you see?

A. I was introduced to Mr. Lewis.

Q. W. L. Lewis? A. W. L. Lewis, yes, sir.

Q. By whom? A. Mr. Mitchell.

Q. All right then, what was said. Just give the details now of what transpired there?

A. He introduced me to Mr. Lewis, and he says, "Now, Mr. Kittess, I guess Mr. Mitchell has talked to you about this," and he says the bank examiner was raising hell about his note being in here so long, and Mitchell says, "Well, I have already talked to him about that."

Q. Then what was said?

A. Well, he asked me to come in, and I came in and he told me to start making out this financial statement.

Q. Now, hadn't you had any discussion about the financial statement before he told you to make it out?

A. Not a thing. When I started to make it out, he said, "Mr. Kittess, you had better let me make this," and he picked up another financial statement and began filling it out.

Q. Now, he asked you immediately to come around inside and sit down and make out a financial statement?

A. Yes, sir.

Q. That is about the language he used? A. Yes, sir.

Q. He gave you a blank to make it out on? A. Yes, sir.

Q. Where did he get that, if you know?

A. Well, it was right there on his desk.

Q. And this paper, "Government's Exhibit No. 68," that you started to make out at this time?

A. Yes, sir, and stopped right there at naught.

Q. Had you at that time signed that over here?

A. No, sir.

Q. You hadn't? A. No, sir.

Q. You say he stopped you and said, "You had better let me make it out?" A. Yes, sir.

Q. You hadn't put anything in the statement yet except just down to there? A. Yes, sir.

Q. You say that this one has been put in front of the seven on the valuation of the Kansas City property?

A. Yes, sir.

Q. That wasn't on there at the time you got up and turned it over to Lewis?

A. There wasn't anything on there, nothing only what I started to write there, and then he said, "You had better let

me write it out for you," and he took another statement and started to write.

Q. But he took another statement? A. Yes, sir.

Q. And you hadn't signed this one then? A. No, sir.

Q. And he filled out that statement? A. Yes, sir.

Q. Did he make any inquiries from you from time to time what property you had?

A. Well, he kept asking me "What else have you got?" and he filled it out, and then asked me to look at it, and I said, "All right," and I signed it.

Q. He had written it down just as you had told him to?

A. Yes, sir.

Q. And you gave him your Kansas City property at that time? A. Yes, sir.

Q. And the amount of money you had in bank?

A. Yes, sir.

Q. And you gave him the interest you had in this oil proposition down in Love County? A. Yes, sir.

Q. You gave him the interest you had in that property down in Meridian, Mississippi?

A. Yes, sir, Meridian, Mississippi.

Q. And the only things that you didn't give him, was the bills receivable? A. Yes, sir.

Q. How much did you tell him you had in bills receivable? A. I didn't have any.

Q. You didn't give him anything on that? A. No, sir.

Q. Then did you sign that statement?

A. After I looked it over I signed that one, yes, sir.

Q. And then what happened then?

A. Well, he says, "Now, that is all," and I started to get up, and he says, "Just a minute;" he says, "Now, you sign this statement, well, this one you started to make out will be all right," and he turned it over on the other side, and asked me to sign it, and I signed it in blank, telling me the girl was out to lunch, telling me when she got back she would fill it out on the typewriter so it would look neat.

Q. Now, how much was the total net worth you say at that time in the statement that you had filled out?

A. About $30,000.00 or $32,000.00.

Q. And that statement that was filled out by Mr. W. L. Lewis and which you left there and signed was given to the bank, wasn't it, by you before you left there? A. Yes, sir.

Q. And you signed your note for the $15,000.00, and you turned that over to the bank? A. Yes, sir.

Q. Did you and Mitchell leave together?

A. We walked toward the hotel together.

Q. You walked toward the hotel together, and you went to the hotel together, didn't you? A. Yes, sir.

Q. Did you and Mr. Mitchell discuss anything about this transaction going back to the hotel?

A. Well, I don't remember.

Q. Anything said by Mitchell about protecting you on this note?

A. Well, he told me that he had some kind of a big deal on and that he was expecting a big commission and he said just as soon as he collected this money he would pay his note and have mine mailed back to me.

Q. Now, then, did you see Mitchell any more after that for several days? A. No, sir.

Q. How frequently did you see him after that transaction? A. Oh, I don't remember.

Q. Were you stopping at the Hotel Tulsa?

A. No, sir, I was stopping at 106 West Fifth street.

Q. And you frequently saw Mr. Mitchell, didn't you, from time to time?

A. Oh, yes, I saw him, but never mentioned anything about the transaction.

Q. Did Mr. Mitchell ever tell you anything about that cashier's check for $15,000.00?

A. No, sir, I don't know anything about his deal with Mr. Lewis in any way, shape or form.

Q. He never told you what it was, did he?

A. No, sir, I didn't know anything about it.

Q. Was this transaction ever mentioned between you and Mitchell after the transaction in the bank when you made your note to the bank?

A. No, sir, I never heard anything about it in any way, shape or form.

Q. You never made any inquiries of Mr. Mitchell?

A. I will say I asked him how he was getting along on his deal. I would like to get my note out of there.

Q. When was that?

A. Oh, about four or five months later.

Q. He didn't say anything then about his having gotten this cashier's check for $15,000.00?

A. No, I don't know anything about any cashier's check. I don't know anything only about going in the bank to get him a renewal.

Q. Did you keep a cash book on your cash that you had from time to time? A. No, sir, I didn't.

Q. How do you know that the amount of cash you had on hand then was $2,500.00 instead of $3,000.00, three years ago?

A. Well, because I never had $3,100.00 in cash on hand in my life.

Q. You never did? A. No, sir

Q. But you have had $2,500.00? A. Yes, sir.

Q. And you know it was that time that you are talking about? A. Yes, sir.

Mr. Davidson: I think that is all.

Redirect Examination by Mr. Dodds.

Q. Mr. Kittess, just one question. You never got any consideration for this matter of any kind, did you?

A. No, sir, not in any way, shape or form.

Mr. Dodds: All right.

Recross Examination by Mr. Davidson.

Q. Mr. Mitchell got the consideration for it, didn't he?

A. I don't know what that transaction was.

Q. You made your note to the bank at Mitchell's request and for his benefit, didn't you?

A. Yes, sir, when I saw he was in a tight place.

Q. And you later renewed your note to the bank, didn't you? A. After I received the letter and the wire.

Q. Then you renewed it for the same amount, for $15,000.00? A. Yes, sir.

Mr. Davidson: All right, that is all.

(Witness excused.)

CLINTON G. GARRETT,

recalled by the Government for further examination and being duly examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Now, Mr. Garrett, will you answer my former question as to whether or not the amounts represented by these several checks of Mr. Koons and Mr. Ballard were actually credited on their notes and credited on the books of the bank?

A. You have reference to the total amount of the checks?

Q. The total amount of the checks of the Mr. Koons' matter first.

A. I find that only $200.00 of the Mr. Koons' checks were applied on his note.

Q. And how much was the total of the checks if you ever made it up, never mind, I don't care. Now, as to the Ballard checks, what part of the total of the Ballard checks was actual-

ly credited upon the Ballard note as shown by the note and the books of the bank?

A. I cannot trace any directly, but there is one check went through the bank on the date of the credit, on February 15, 1923, there is a credit of $950.00, and on that date this check here of $450.00 went through the bank and this check here of $3500.00 also went through the bank making $3950.00. That is the date of the $950.00 credit.

Q. That credit was made on Mr. Ballard's note?

A. Yes, sir.

Q. Now, the total amount of Mr. Ballard's note was how much? A. Before that $21,750.00.

Q. Now, these checks I hand you, Government's Exhibit 59 for $1,400.00, that is marked "to apply on note A. M. Ballard," was that actually applied on the note? A. No, sir.

Q. And Government's Exhibit No. 61 in the sum of $125.00, marked "To apply on note," was that applied on Mr. Ballard's note? A. No, sir.

Q. Government's Exhibit 63, in the sum of $50.00, signed with the name A. M. Ballard, appearing on the *bac*, there; we don't claim it is his signature; was that sum applied on the note? A. No, sir.

Q. Exhibit 64, $25.00 marked "To apply on note," was that applied on the note? A. No, sir.

Q. Mr. Ballard's check; check in the sum of $3500.00, Government's Exhibit 65, marked "To apply on note, A. M. Ballard," was that actually applied on his note? A. No, sir.

Q. Now, I ask you this general question: That in all the instances where those checks marked "To apply on note" were turned into the bank and the books don't show that it was in fact applied on the note, was your item of loans and discounts then correct in Exhibits 41, 42, and 43 in respect to those payments? A. Why, no.

Q. It would not be correct? A. No, sir.

Q. You made the item in good faith, supposing it was correct? A. Yes, sir.

Q. But it wasn't in fact? A. No, sir.

Q. Would the same thing apply to the various checks of Mr. Koons that I have handed you? A. Yes, sir.

Q. Now, in the matter of the note of Mason Kittess. You have already covered the Kittess matter in your testimony here.

Mr. Dodds: That is all. Take the witness.

Cross Examination by Mr. Davidson.

Q. Mr. Garrett, all that you can tell from the books of the bank is that these Koons checks which are Government's

Exhibits No. 54, A, B, and so on, were not shown on the books of the bank?

A. No, the record doesn't show these as being applied.

Q. The record doesn't show that the bank ever received anything on those checks, does it?

A. The stamps indicate they went through the bank.

Q. But that doesn't show that the bank got it, does it? If an individual came in there and cashed the check at your bank, it would have gone through the bank the same way?

A. Yes, sir.

Q. There is not anything from the check you can tell the bank actually got the proceeds of that check, can you?

A. No, sir.

Q. As a matter of fact, your bank didn't get the proceeds of that check. The books show the bank didn't get the proceeds of those checks? A. Yes, sir.

Q. And the bank books show the bank didn't get the proceeds of the Ballard checks?

A. As a credit on the note, no, sir.

Q. Then the bank books, so far as you know, are correct, aren't they?

A. Not the way I understand this. Now, the way I understand it to be this, the notations on the checks indicate they were to be credited on the note.

Q. What I am trying to get at is this: That while those notations there on the check and that may have been the intention of the parties in drawing the checks, as a matter of fact, the proceeds of those checks never reached the bank. The bank never got it, did it?

A. Not according to the books.

Q. As a matter of fact, independent of that, you know the bank didn't get it?

A. It just shows this as far as I can check it, or know anything about it; these checks went through the bank, went through the teller's window, with the paying teller's stamp and that is all I can tell, that they went into the bank.

Q. Now, if the bank had got the proceeds of the checks, themselves, it would have shown on the books of the bank, wouldn't it?

A. If they put these checks in here and take the cash out the cash would be less that night. If these checks would go into the bank and cash taken out for them, it would show cash that much less, and the checks——

Q. Let me ask you this question. Suppose I had come to the bank with part of these Ballard checks endorsed on the back by Mr. Ballard and had asked the bank to cash it, and the bank had cashed it, and I got the money, you would have

found the same stamp on the check that is on there now, wouldn't you? A. Yes, sir.

Q. Just exactly? A. Yes, sir.

Q. If I had taken the check to the bank and left it with the bank as an application on the note, then your books of the banks would show the bank received the proceeds of that, wouldn't it?

A. If these checks were brought into the bank and not applied on the note as shown here, or if the cash was not taken out, the books of the bank would show then the cash was long that much, unless there was a credit made to some account on the books.

Q. Now, do the books of the bank on those Ballard checks or any of those Koons checks show long or short on cash?

A. Well, I haven't checked the over and short myself.

Q. Your books balanced, didn't they?

A. Well, they would balance with that "over and long" account.

Q. Yes, I will ask you to examine the books of the bank and state what amount of the Koons note that entered into the total amount of loans and discounts on April 3, 1923.

A. April 3?

Q. Yes. A. That would be $29,300.

Q. Now, what book of your bank, now, would show that?

A. The discount register.

Q. Well, get it and see if it showed on April 3, that amount on that Koons note. A. Yes, it shows $29,500.

Q. Shows $29,500 on April 3, 1923?

A. Well, that would be the amount unpaid. The item goes into the book before that time, but that is the amount at that date that was unpaid.

Q. And that was the correct amount? A. Yes.

Q. Well, now, what about the Ballard—was that $29,500 or 29,300? A. Oh, $29,300.

Q. $29,300? A. Yes, sir.

Q. That is correct, isn't it?

A. That would be the amount due.

Q. Now, on the Ballard note, what was the amount that entered into the total of loans and discounts on April 3, 1923?

A. April 3, 1923?

Q. 23. A. Show an unpaid balance of $20,800.

Q. Now, are you getting that unpaid balance from the note itself or from the books of your bank?

A. I am taking it from the discount register.

Q. The discount register shows twenty thousand?

A. From the book here.

Q. Twenty thousand and what? A. $800.00.

Q. $20,800. Where is that now?

A. See the note is entered in here, $21,750, and here is a credit; deducted, it shows $20,800.

Q. Now, I will ask you if the note does not show the same condition on that date? A. That would show the same.

Q. Then the books of your bank reflect the same condition that the note itself does? A. Yes.

Q. Both on the Ballard note and on the Koons note?

A. Yes.

Mr. Dodds: We agree to that, your honor. That is exactly what we are complaining about.

Q. Now, that shows the same thing on your liability ledger, doesn't it, Mr. Garrett?

A. Well, it should; I suppose it does. Now, sometimes that liability ledger would be a little in arrears in posting, and would not show right up to date. We did not keep that up like we did these books, because we needed these to balance with, but not so with the liability ledger.

Q. It is posted and balanced every week, isn't it, Mr. Garrett?

A. It was the custom to balance—take and run off the balance each week, yes.

Q. Now, I will ask you, on the condition—it is that—do the books of the bank show the Kittess note of $15,000 on April 3, 1923?

A. I would need that number to get that, the number on the Kittess note.

The Court: In all these matters, can you not have him look up all this and then recall him to testify concerning it, without taking the time to examine into it now?

Mr. Davidson: Well, if he could do that, if your honor please, but the probabilities are he would have to refresh his memory again after going over this stuff.

The Court: Oh, if he knew what you wanted, undoubtedly——

Mr. Davidson: Well, it won't take but a few minutes longer on this. I just want to get it clearly here the condition of the books with reference to these reports.

Mr. Dodds: I would like to state to the court, I think this is proper at this time, in view of the examination. Our claim in the indictment—our inquiry is not, if your honor please, that the books of the bank were incorrectly reflected in these reports, but that the reports—the false entries in the reports appeared because the books of the bank were not truly kept, and there is no

question about these matters that Mr. Davidson has been raising here at all.

Mr. Davidson: Then he ought to have prosecuted us for making false entries in the books of the bank instead of the reports of the Comptroller of the Currency.

Mr. Dodds: No, sir, you are dead wrong about that, Mr. Davidson.

Mr. Davidson: If we had made a report in to the Comptroller of the Currency that was not in accordance with the books of the bank it would have been a false report.

The Court: We will argue that out later on.

Mr. Davidson: All right.

The Court: Proceed.

A. You are asking for the unpaid balance?

Q. On the Kittess note; if the Kittess note was included on the books and the books show that the Kittess note was included in the loans and discounts on April 3, 1923.

A. This $15,000 note was shown here on the record of the bank unpaid.

Q. And do the books of the bank show that the Mason Kittess note of $15,000 was discounted by the bank on December —what is the date of that note? A. The original?

Q. Yes, the original. A. December, 1922.

Q. December 18, 1922—December 18, 1922.

A. Yes, that was the date it was discounted—December 18.

Q. And the books of your bank show that that note, and the renewal of it, was carried on the books of your bank from that time until the Security National Bank took it over?

A. Yes, sir.

Q. And that note went into the reports to the Comptroller of the Currency and on to the books of your bank on each of those three dates, April 3rd and June the—April 3rd, June 30th and September 14th, 1923, did it not?

A. How was that question?

Q. The Kittess note was carried in the loans and discounts on April 3, June 30 and September 14, 1923? A. Yes, sir.

Q. Now, what was the amount of the Ballard note that went into the loans and discounts on June 30, 1923, as shown by your bank books? A. Now, what date was that?

Q. June 30, 1923.

A. That would be the same amount as shown before, $20,800.

Q. And that would be the same amount as shown by the note itself, wouldn't it? A. Yes, sir.

Q. Now, as to the Ballard note on that date?
A. That was the Ballard note.
Q. Or as to the Koons note on that date?
A. That is on June 30th?
Q. June 30, 1923.
A. It would be the same amount, $29,300.
Q. Now, as to the Ballard note on September 14, 1923—what is the amount of that note that went into the grand total of loans and discounts on September 14, 1923, according to the books of your bank? A. It would remain the same.
Q. It would remain the same. And as to the Koons note?
A. It is also.
Q. Also the same as it was on the other date? A. Yes.
Q And the other report. Now, Mr. Garrett, you said that if the bank had received the proceeds of these Koons and Ballard checks that the books of the bank would be incorrect. Now, did I understand you correctly?
A. If I understand the question correctly, as—what purpose—of the check there—if that check was put into the bank and the cash remained in or no disposition made of the proceeds—well, it would not be exactly incorrect. The balance—it would be out.
Q. It would be out of balance, wouldn't it?
A It would be out of balance.
Q. That is all it would be, wouldn't it. Now, if the bank did not get the proceeds of those checks, but somebody else got it and cashed the checks there, then the books of your bank would be correct, wouldn't they; there would not be any short or long about it?
A. No, I don't see where they would be incorrect.
Q. No, if I had gone there with these checks and cashed them at the bank and took the money out, myself, then the books of the bank would have shown the transaction just like they do now, wouldn't they? A. Yes.
Q. And the books would be correct and the reports to the Comptroller of the Currency would be correct.

The Court: Let me ask a question: Suppose that I had owed one of these notes and that I had delivered to the bank or some officer of the bank my check to make payments on it and the payments that I had made were not applied on it; would the books of the bank be correct in not applying what I had paid on it?

A. Well, the books of the bank would not bear out the purpose of the check.
Q. Well, as a matter of fact, I would be owing the bank that much less than what the books of the bank would show, unless my payments were applied, wouldn't I?

A. If you bring a check in, say $500, to apply on your note, I take it that that is the—then the books of course would show a $500 credit. If that was not shown, why then it would be——

By Mr. Davidson:

Q. $500 long, wouldn't it; your books would be out of balance $500, wouldn't they?

A. Your books would be out of balance $500, and the purpose of the check would not be carried out.

The Court: The books of the bank are expected to be right, between the customers and the bank and everybody else, just as much for the use of the customers of the bank, depositors and borrowers and so on, that the books should be kept right as it is to the officers of the bank, isn't it?

A. Yes, sir.

The Court: Of course it is. And if they don't truly show the disposition made of the funds coming into the bank, paid to the bank, then they are not right, are they?

A. No, sir.

By Mr. Davidson:

Q. Now, there is one thing that is certain; the books of the bank do not show that the bank received the proceeds of these checks, except a credit of $200 on the Koons note and a credit of $950 on the Ballard note?

A. The books themselves, the records, where that would run into and should show, does not show.

Q. Does not show that. And as far as you know, the bank did not get any proceeds from those checks, did it?

A. Well, I don't know whether they would come right in on what the bank got.

Q. You don't know anything about that, personally, do you? A. All I know, the checks came into the bank.

Q. Passed through the bank?

A. Were handled in the bank, but where the money went, I don't know.

Q. And the only way you know that is they bear the bank's stamp on the face?

A. Yes, that is a record; one of the records, yes.

Q. That stamp would have been on there just the same if some outside person cashed them, wouldn't it? A. Yes.

The Court: Somebody got the money on those checks.

A. Yes; this book, as far as I could—I can't trace where the money went, but it is not on here; that is all I can tell.

Mr. Davidson: I believe that is all.

Mr. Dodds: Just one question.

Redirect Examination by Mr. Dodds.

Q. As to all of these Koons checks that are drawn payable right to the Liberty National Bank, itself, they were put in there and not applied on the note as they should have been, and somebody else got the money illegitimately out of the bank, then the books would not be long, would they?

Mr. Champion: We object to his question, as calling for a conclusion. He says "illegitimately."

Mr. Dodds: I say if they——

The Court: He can answer.

Q. Then the books would not be long it somebody got the money that was not entitled to it and made no note of it; isn't that true?

Mr. Davidson: If he knows of his own personal knowledge.

The Court: He is answering this as an expert.

A. Any items that might come into the bank, those checks or cashier's check made payable to the bank, and the proceeds gotten by somebody else, the books and records wouldn't show where the proceeds went.

Q. Your books would not be long, would they, if somebody took the money out and carried it away? A. No.

Mr. Dodds: Well, that is all.

The Court: Stand down.

Cross Examination by Mr. Davidson.

Q. But the books would show the bank did not get the money, wouldn't they; if somebody else took it out your books would not show that the bank got the money, would they?

A. Well, you can—it shows—shows the effect on the cash, you understand; if the cash was put in and nothing done with the proceeds, no credit made to offset it, it would show it in effect on the cash—the cash would be long.

Mr. Davidson: Mr. Garrett, if somebody else got the money and took it out, it would not affect your cash at all, would it?

A. Oh, no; it would affect the cash, but it would balance.

Mr. Dodds: Then the books would not be wrong.

A. It would affect the cash; it would lower the cash that amount, but it would not throw the books out of balance.

Mr. Davidson: It would reduce the cash amount that much?

A. Yes.

Mr. Davidson: But it would not throw your books out of balance?

A. Oh, no.

Mr. Davidson: That is all.

Mr. Dodds: That is all.

The Court: Stand down.

Mr. Davidson: Mr. Garrett, I will ask you this question: If people do not frequently make checks payable to banks when they draw the cash out themselves?

A. Well, I suppose some people might do that.

Q. Well, as a matter of fact, doesn't that frequently happen?

A. I won't say frequently; it is customary to make them to cash.

Q. Sometimes make it payable to bank, sometimes to cash, sometimes make it payable to themselves; there are different way of cashing a check, aren't there? A. Yes.

Mr. Dodds: When they are drawing cash out that way, they don't mark "To apply on my note" on it, do they, on the check?

A. No.

The Court: Call the next.

DEWEY MILLS

was called as a witness on behalf of the Government, and having previously been duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Mills, I call your attention to Government's Exhibit No. 68, being a financial statement of one Mason Kittess under date of December 13, 1922, and to your name signed to that statement as a witness; is that your signature?

A. Just a minute.

Q. Right here—here. A. Yes, sir, it is.

Q. Now, you live over in Tulsa, do you not? A. Yes, sir.

Q. And you were an employe of the Liberty National Bank of Tulsa during the last year of its existence?

A. Yes, sir.

Q. You were a clerk in the bank, were you not?

A. Yes, sir.

Q. Do you remember of signing your name as a witness to that financial statement of Mason Kittess?

A. I believe I do, sir.

Q. Who asked you to do it? A. Mr. W. L. Lewis.

Q. Did you actually witness Kittess' signature? Was he there when you did it? A. No, sir.

Q. Did you see him there at all? A. No, sir, I never did.

Q. When was the first time you ever saw him in your life?

A. Why the trial—the first trial we ever had.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Mills, you were—were you a notary public?

A. No, sir.

Q. You were employed in the bank at this time?

A. Yes, sir.

Q. You were there in the bank on the day that this paper purports to have been witnessed, weren't you? A. Yes, sir.

Q. You have an independent recollection of Mr. W. L. Lewis asking you to witness Mason Kittess' signature to this particular paper? A. Yes, sir.

Q. And Mr. Kittess was not there?

A. No, sir, not that I know of.

Q. Where were you when Mr. Lewis made that request of you? A. I was at my desk.

Q. At your desk? A. Yes, sir.

Q. Where is that now, with reference to his private office? A. It is about the center of the bank, I should say.

Q. About the center of the bank? A. Yes, sir.

Q. I will ask you if it was your custom, frequently, to have papers brought in to your cage for you to witness, from time to time?

A. Well, I would say that I have—I have witnessed checks from parties that could not write.

Q. Uh-huh.

A. But I think I have signed at least two or three papers before, like that.

Q. When they were just brought in to you?

A. Just brought in to me.

Q. When you did not see the man sign his name?

A. Yes, sir.

Q. You don't know whether they were back in Mr. Lewis' office or not?

A. No, sir, I did not know where they were; just brought to me and I signed it.

Q. Papers just brought to you and you were asked to witness it and you did witness it and turned it back to them?

A. Yes, sir.

Q. That is all you know about this? A. That is all I know.

The Court: Stand down.

By Mr. Davidson:

Q. Mason Kittess' name was on this paper when you witnessed it, wasn't it? A. I could not say.

Q. You could not say?

A. Whether it was on there or not. I know they brought the paper back. If I can remember right, it was folded, and just asked me to sign the paper and I signed it.

Q. You signed it? A. I signed it.

Q. You did not see what was on it?

A. I could not say for sure.

Q. You don't know whether Mason Kittess was on it at that time, or not? A. No, sir.

Mr. Davidson: That is all.

Mr. Dodds: That is all.

The Court: Stand down. I think we will have to suspend here. Are you about through for the Government?

Mr. Dodds: Pretty nearly, if your honor please. Two witnesses to recall for one question each, and I think only one general witness left.

The Court: All right.

Mr. Dodds: It won't take long.

The Court: Gentlemen of the jury, under the admonition I have given you and in the care of the officers you will now go to lunch and return here at 2:00 o'clock this afternoon.

(Thereupon, pursuant to the order of court, court takes a recess until 2:00 o'clock p.m.)

At 2:00 o'clock p.m. court met pursuant to adjournment, the parties being present and represented by counsel as hereinbefore noted, whereupon the following proceedings were had and done, towit:

ROY A. KOONS,

recalled as a witness on behalf of the Government for further examination, and being duly examined at the time and place above mentioned, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Koons, you are the same Roy A. Koons on the stand here yesterday? A. Yes, sir.

Q. Mr. Koons, I want to ask you this one question. At the time that you testified that you went down to the Lewises' house, concerning getting the money back that you had paid in on your note, did you, on any one of those occasions have any talk with either of these defendants about your cancelled checks? A. Yes, sir, with A. E. Lewis I did.

Q. Who was present? A. Mr. Ballard.

Q. Mr. Ballard and you and A. E. Lewis, just the three of you? A. That is all.

Q. Now, what conversation did you have with A. E. Lewis at that time concerning your cancelled checks?

Mr. Davidson: To which the defendants each object for the reason it is incompetent, and immaterial, and doesn't tend to prove any material fact or circumstance in this case.

The Court: Overruled. Proceed.

Mr. Davidson: Note an exception.

A. Well after some conversation about the transaction, Mr. Lewis asked me if those checks were for sale, if I would sell them, and I told him I would not.

Q. Was any price mentioned? A. No, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Who was present at that time, Mr. Koons?

A. Mr. A. E. Lewis, Mr. Ballard and myself.

Q. W. L. Lewis there? A. No, sir.

Q. No one except you three? A. That is all.

Q. That was the first time you talked with A. E. Lewis at his house?

A. That was the first visit, yes, sir.

Q. Then you finally signed this compromise agreement of settlement which has been introduced in evidence here when Mr. Yancey and Mr. Silverman and Mr. E. G. Lewis, W. L. Lewis, A. E. Lewis and Mr. Ballard and yourself were present. Was anything said about buying your checks? A. No, sir.

Q. Or returning those checks?

A. I don't think there was anything said about it at that time, no, sir.

Q. When that contract was signed up, you kept your checks, didn't you? A. Yes, sir.

Q. Nobody demanded the return of those checks at that time, did they? A. No, sir.

Q. The checks were not mentioned at that time, were they? A. Not that I heard, no, sir.

Q. Now, you know that Mr. Ballard testified on the trial of the other case against these defendants that there wasn't any such conversation as that took place, don't you?

A. I don't know.

Mr. Dodds: What is that? The witness can't know what Mr. Ballard testified to, because you excluded him from the room.

The Court: Just a minute. Were you present when Mr. Ballard testified?

A. No, sir.

The Court: All right. Is that all?

Mr. Davidson: I think that is all.

(Witness excused.)

E. A. ROSS

was recalled as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Ross, while you were director of the bank, and during the latter two years of the time the bank was open, I ask you whether you ever had any conversation with either of the defendants here relative to the holding of stockholders and directors' meetings, or either of them? A. Yes, sir.

Q. What was that conversation, please, and who was it with? A. Why——

Mr. Davidson: Now, just a moment, Mr.—. We object to the conversation unless he indicates when it was and who was present, and where it was.

The Court: Very well.

Mr. Dodds: Very well, let him tell that.

A. It was with A. E. Lewis.

The Court: Where was it?

A. In the bank building.

The Court: All right.

Mr. Davidson: Now, when?

A. I could not give the exact date; in those two years, different times.

The Court: It was before the bank was taken over by the Security?

A. Yes, sir.

The Court: All right.

By Mr. Dodds:

Q. Now, what was the conversation?

A. Well, I told Mr. Lewis that some of the other directors had asked me to insist on directors' meetings being held, and I told him that—

Q. What reply, if any, did he make to that, Mr. Ross?

A. Well, at one time he turned to W. L. and told him to—the next meeting, to send out notices.

Q. I ask you whether you had any conversation with either of them relative to stockholders' meetings?

A. No, sir, I don't know as we ever did, not regarding stockholders—just meetings of the bank.

Mr. Dodds: That is all.

A. Directors or stockholders.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. Mr. Ross, now was that conversation with A. E. Lewis in 1922 or 1923? A. I could not say positively.

Q. Who were the other directors of the bank at the time that conversation took place?

A. Well, Mr. Gries had spoken to me abount it, and Dr. McInnis. Whether—at that time Mr. Greis had called me up to his office at one time and asked me to speak to the boys about it, that we had been asked to sign papers, and no meetings had been held.

Q. And you had done that? A. Yes, sir.

Q. Mr. Greis knew as well as you did how those minute books were being kept, didn't he? A. Yes, sir.

Q. And you went ahead from that time on and signed up these minutes, just like they had been held? A. Yes, sir.

Q. That is just one conversation that you recall now that you had with A. E. Lewis?

A. Well, that is the one that is impressed on my mind; I spoke several times to him about it, about meetings—about holding meetings.

Q. And these other directors knew just how these meetings were being held, didn't they?

A. Well, there wasn't any meetings being held; that is, there was no meetings called, no meetings held only the regu-

Q. Well, they knew there was no formal meetings being held, didn't they?

A. Yes, must have known it; I suppose so.

Q. Yes. Knew the directors were signing up these minutes as though they had been held, didn't they?

A. I don't know as to the others.

Q. You know that Mr. Gries knew it?

A. He knew there were no meetings held.

Q. In your conversation with Mr. Gries, you disclosed to him you were signing up these minutes from time to time?

A. He knew that I was.

Q. He knew that you were, didn't he?

A. I presume he did, knew that they were signed and there was no meetings held.

Mr. Davidson: That is all.

The Court: Stand down.

Redirect Examination by Mr. Dodds.

Q. You spoke before about your stock being hypothecated and disqualifying you as a director after August, 1923. Did you hypothecate your stock, Mr. Ross?

A. Yes, sir, I put that up as a loan.

Q. What is that? A. I put that up on a loan.

Q. Where was that put up?

Mr. Davidson: That has been gone into, if your honor please.

Mr. Dodds: No, I forgot to ask him that, and mean to do it.

The Court: Well, it don't really matter where he hypothecated it.

Mr. Dodds: All right, that is all.

The Court: Who will you have next?

JOSEPH A. GENAU

was called as a witness on behalf of the Government, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Genau, your full name is Joseph A. Genau, is it not? A. It is.

Q. You are a special bank accountant in the Department of Justice? A. I am.

Q. And how long have you been an accountant in the Department of Justice? A. Since July 1st, 1920.

Q. Prior to 1920, what was your work, immediately prior?
A. Assistant to the Food Commissioner from Italy.
Q. And prior to that what was your work?
A. Connected with the Commercial National Bank of Washington, D. C.

Q. Now, you were engaged during the year 192—a part of the year 1924 and also a part of this last year in examining the books and affairs of the Liberty National Bank of Tulsa?
A. I was.

Q. And you did that as your official work as an accountant of the Department of Justice? A. I did.

Q. Now, Mr. Ganeau, I would like to ask you in connection with the note of Simon W. Knoten, note No. 20190, whether or not you traced that note transaction on the books of the bank, and as an accountant found out where the proceeds went? A. I did.

Q. Where did the proceeds of that note go?

Mr. Davidson: To which the defendants object, if your honor please, to the witness reading from a memorandum. The books are here and the books are the best evidence of what they show.

The Court: That is true, but if this witness can state from memory then you can use the books in cross examining, but I don't want to take the time of going into the books unless it is necessary. Proceed.

Mr. Davidson: That is true, but he isn't doing it from memory, but from a memorandum.

The Court: It is a memorandum he made from the books. Proceed.

Mr. Davidson: Note an exception.

Q. State the transaction as you found it from the books?
A. On December 16, 1922, note of Simon W. Knoten in the amount of $15,000.00 was discounted as No. 15075, and proceeds credited to his account. On December 19, 1922, the account of Simon Knoten was charged $15,000.00 and this amount was credited to the account of A. E. Lewis. The above note on June 8, 1923, was renewed by note No. 20190 for $17,500.00; the difference, $2,500.00, was converted into Liberty National Bank cashier's check No. 25,311, payable to S. W. Knoten, and endorsed by S. W. Knoten. Where the proceeds of the cashier's check went to, there is no record in the bank.
Q. That is as to the $2,500.00? A. Yes, sir.

Q. Now, turn to the transaction of James McDonald, note No. 20057. What did you find from the books of the bank as to where the proceeds of the James McDonald note went, Ex[illegible] No. 25?

A. On November 3, 1919, note from James W. McDonald for $12,225.00 was discounted as 7833, and proceeds were included in a credit to his account in the amount of $12,230.06. On this same date this latter amount was transferred to the credit of Houston-Fibele & Company, stock brokers of Tulsa.

Q. Now, that note later increased in amount from $12,500.00 to twenty odd thousand dollars. Did you trace that transaction through the books of the bank? A. I did.

Q. And what does the books of the bank show as to the increasing of the consideration of that note?

A. The note 8388 was taken up by note 9081 for $25,427.72 which later note also took up note 8387 of Hugh McDonald for same amount; that was the same amount of $12,225.00, making the grand total after interest had been added to the James W. McDonald note. Several payments on account were made on note 9081 reducing to $23,529.72.

Mr. Davidson: Just a moment. If your honor please, we desire to object to all of this testimony of this witness relative to these notes because it is incompetent, irrelevant and immaterial and doesn't prove or tend to prove any material fact or circumstance in this case.

The Court: Only it may tend to show why the records of the bank or the minutes of the bank were kept in the manner they were. The purpose of the entire matter, the intent.

Mr. Dodds: That is all it is offered for.

Mr. Davidson: Well, we don't think it is competent for that.

The Court: Well, I am letting it in under the idea it may be competent to prove that fact.

Mr. Davidson: We desire an exception to the court's ruling. And may the record show an exception to each one of these questions on these notes of a similar nature and on the same ground and the exception?

The Court: Yes.

Q. I will ask you, Mr. Ganeau, whether you traced on the books the note of Edward Soph, offered here in evidence?

A. Pardon me a second, Mr. Dodds; I had not finished tracing that note. On May 19, 1923, the balance $23,529.72 was renewed by note No. 20057 in the amount of $23,313.72; payment of $216.00 was made on May 21, 1923, reducing the same to the latter total.

Q. Now, then, I ask you, Mr. Ganeau, whether you also traced the Edward Soph note transaction, being the note that is here in evidence? A. I did.

Q. State what you found?

A. On April 26, 1922, note of Edward Soph for $18,000.00 was discounted as No. 10047 and the proceeds we were unable to trace as no offset credit or entry appears on the books of the bank. On May 31, 1923, the above note for $18,000.00 was taken up by note No. 20142 for $33,000.00 which latter note also took up note No. 10049 for $15,000.00. Note No. 20,142 was reduced to $30,000.00 by payments on account on July 3, 1923, and August 2, 1923, for $1,000.00 and $2,000.00, respectively.

Q. I understand you to say that you couldn't trace the proceeds of the note? A. No, sir.

Q. Turn to your memorandum as to the Powell transaction, C. F. Powell.

The Court: Proceed.

Q. State what the books of the bank show as to the use of the proceeds of the Powell transaction, of the Powell note, $25,000.00?

A. On May 21, 1923, note of C. F. Powell, for $25,000.00 was discounted as No. 20,064, and draft No. 6803 for $24,495.00, being proceeds of above loan, less interest amounting to $505.00, was drawn by Liberty National Bank of Tulsa on the Mechanics and Metals National Bank of New York, to the order of C. F. Powell. The above draft was deposited to the credit of C. F. Powell in the Empire Trust Company of New York on May 23, 1923. On May 24, 1923, the account of A. E. Lewis in the Liberty National Bank of Tulsa was credited with $20,000.00, this deposit being a check of C. F. Powell, drawn on the Empire Trust Company of New York; on May 28, 1923, the account of A. E. Lewis in the Liberty National Bank of Tulsa was credited with $5,495.00. This deposit included a check of C. F. Powell on the Empire Trust Company of New York for $4,495.00. This amount represented the balance of the proceeds of the above loan. The above loan No. 20,064, for $25,000.00. Well, that just states where it was taken over.

Q. Yes. All right. Then I ask you if you traced the proceeds of the Dr. E. Forrest Hayden note? A. I did.

Q. Kindly state what became of the money?

A. On June 14, 1923, note of E. Forrest Hayden, No. 20,217, in the amount of $5,000.00, was discounted by the Subject Bank and proceeds credited to his account in the Liberty National Bank of Tulsa. On June 15, 1923, $3,000.00 of the above proceeds was withdrawn from the above account as a— and no offset credit of entry could be found. On the same date another charge for $1700.00 appeared in the Hayden account and this transaction was handled in like manner. The balance

of the proceeds of the above note, amounting to $300.00, was withdrawn from Dr. Hayden's account on June 21, 1923, and no offset credit of entry could be found.

Q. Yes. The transaction of William O. Bohnefeld?

A. On June 16, 1923, note of William O. Bohnefeld for $10,000.00 was entered as Discount No. 20,229, and proceeds were credited to the account of the Bohnefeld Cleaning Works. On the same day part of the proceeds of the above note, in the amount of $3,000.00, was withdrawn from this account, and on the same day a cash deposit to the account of W. L. Lewis for $5,200.00 was made.

Q. Yes. A. On June——

Q. Pardon me.

A. ——18, 1923, there was withdrawn from the Bohnefeld Cleaning Works account the balance of the proceeds of the above note, amounting to $7,000.00, and on the same date a cash deposit to the account of W. L. Lewis was made in the amount of $8,000.00.

Q. Mr. Genau, can you tell us, from your examination of the book—do you remember how that money got out of the Bohnefeld account, how it was taken out? Was it checked out?

A. Well, it was not checked out.

Mr. Davidson: Well, we object to that, if your honor please, unless—now, he is testifying from the books. He said the books do not show how that got out. Now, we don't want any speculation on the part of this witness.

The Court: No, if he knows from examining the checks themselves or the records of the bank—what he knows about the matter.

A. Why, the proceeds were withdrawn from the account, as shown by the individual ledger sheet of the Bohnefeld Cleaning Works. But I requested Mr. Bohnefeld to let me have the Bohnefeld Cleaning Works checks in order to check against the account and no such checks were found.

Q. Yes.

A. And he stated to me that he did not draw any checks——

Mr. Davidson: If you honor please, we object.

The Court: That would be hearsay.

Mr. Dodds: Stricken out; you can't say what he said.

Q. Turn to the transaction, Mr. Genau, of Dr. M. A. Houser and state the—trace the proceeds of that transaction.

A. On June 27, 1923, note of Dr. M. A. Houser for $10,000.00 was entered as discount No. 20,284, and the proceeds were credited to his account. On the same date $5,000.00 was

withdrawn from his account, and on the following day, June 28, 1923, $2500.00 was withdrawn. The total of these two withdrawals, $7500.00—no, that is my memorandum. I just want to state that on the same day a cash deposit was credited to the account of W. L. Lewis in the amount of $8,000.00.

Q. Yes.

A. And the balance of the proceeds of the above note, in the amount of $2,500.00 was withdrawn from Dr. Houser's account on June 30, 1923. On this same date a cash deposit to the account of W. L. Lewis for $10,000.00 appeared.

Q. Turn to the transaction of the Lincoln Motor Company, or the Lincoln Company—pardon me—note No. 25019?

A. On August 27, 1923, note of the Lincoln Company was discounted as 20,519, for $20,000.00, and proceeds were credited to the account of the Lincoln Company; on the same date $18,000.00 of the above proceeds was transferred to the account of A. E. Lewis; on September 4, 1923, the balance of the proceeds, $2,000.00, was transferred to the account of A. E. Lewis.

Q. Turn to the transaction, note No. 20,077, of the Mingo Company?

A. On December 20, 1922, note of the Mingo Company for $33,000.00 was discounted as No. 15,092, and proceeds were credited to the account of the above company; on the same date this account was charged $33,000.00, which amount was applied to the payment of the following notes: Note No. 13,095, maker, A. E. Lewis, $28,000.00; note No. 14,047, A. E. Lewis, $5,000.00, making a total of $33,000.00.

Q. Government's Exhibits 31, 32, 33 and 34 are four notes of the defendants here, the first two by Allie E. Lewis, the second two by William Lloyd Lewis. I ask you whether you determined from the books of the bank in your examination whether the two Lewises got credit for the proceeds of those notes, both being notes made during the year 1923?

A. What was the total of the A. E. Lewis notes, Mr. Dodds, to which you have reference?

Q. I don't know as I can tell you that Mr. Ganeau. It was the 1923 A. E. Lewis note.

A. I believe I have it here.

Q. Here we are. These are the notes in question (handing witness notes).

A. Note No. 20374 in the amount of $34,000.00 was a renewal of several notes by A. E. Lewis and note for $1,000.00, note No. 20577 was discounted on September 15, 1923, and proceeds were credited to the account of A. E. Lewis.

Q. What was the sum of that?

A. $1,000.00. Note No. 20,373 was a renewal of several notes of W. L. Lewis discounted on July 16, 1923.

Q. In what sum?

A. The sum of $34,000.00. Note No. 20.579 in the amount of $1,000.00 was discounted on September 15, 1923, and proceeds were credited to the account of W. L. Lewis.

Q. Now, turn to the note of Mason Kittess, No. 20.343?

A. On December 18, 1922, note of Mason Kittess for $15,000.00 was discounted as $15,077.00, and proceeds were placed into cashier's check No. 22,755 drawn on the Liberty National Bank to the order of A. R. Mitchell. On July 7, 1923, this note was taken up by note No. 20,343.

Q. Could you tell from your examination of the books of the bank exactly what became of the $15,000.00?

A. The $15,000.00, that is, the proceeds of the Kittess' note, took from the assets of the bank a note of A. R. and Pauline Mitchell in the amount of $13,600.00.

Q. And was that a note drawn to the bank or note drawn to W. L. Lewis?

A. It was impossible to tell; I didn't have the note.

Q. Yes, you couldn't get that? A. No, sir.

Mr. Dodds: Take the witness.

Cross Examination by Mr. Davidson.

Q. Mr. Genau, this note of $34,000.00 signed A. E. Lewis, dated July 16, 1923, was a renewal note of other notes, wasn't it? A. Yes, sir.

Q. There was no money left the bank on this note which is Government's Exhibit No. 31? A. No, sir.

Q. What was the dates of the notes that it renewed?

A. On February 7, 1923, note of A. E. Lewis was discounted for $10,000.00 as 17,044, and proceeds credited to his account. Do you want me to go straight down the line?

Q. Yes, go—go right straight down the line.

A. On February 26, 1923, note of A. E. Lewis was discounted for $1,000.00, number 17,079, and proceeds credited to his account. On February 27, 1923, note of A. E. Lewis was discounted for $11,000.00 as 17,085 and proceeds credited to his account. On March 13, 1923, note of A. E. Lewis was discounted for $1,000.00 as 18,020 and proceeds credited to his account. On March 16, 1923, note of A. E. Lewis for $11,000.00 was discounted as 18,035 and proceeds credited to his account. On March 19, 1923, note of A. E. Lewis for $1,000.00 was discounted as 18,042 and proceeds credited to his account. All of the above notes were taken up on May 16, 1923, by note of A. E. Lewis for $35,000.00 discounted as 20048, the latter note was renewed on July 17, 1923, by note 20,374 for $34,000.00 it being reduced $1,000.00.

Q. When?

A. As follows: Have you the note there, Mr. Davidson?

Q. Yes.

A. I have to have the discount register, also. Payment of the $1,000.00, Mr. Davidson, was not traced out for me. I took into consideration the notes of A. E. and W. L. Lewis that were discounted on that day and renewed.

Q. You don't know when that $1,000.00 was paid?

A. It was paid sometime between those dates.

Q. What dates?

A. Between May 16, 1923 and July 17, 1923.

Q. Any payments made on that $34,000.00 after that time? A. On November 15, 1923, paid $22,500.00.

Q. Now, those notes that were made in the early part of 1923, were they renewal notes or were they original notes?

A. The notes I have just read?

Q. The first ones you read earliest in dates there?

A. They were new notes.

Q. They didn't renew other notes? A. No, sir.

Q. Now then on the W. L. Lewis note of $34,000.00 dated July 16, 1923, that was a renewal note, wasn't it? A. Yes, sir.

Q. What notes did it take up?

A. It took up note No. 18015 discounted March 10, 1923, and proceeds credited to the account of W. L. Lewis.

Q. What was the amount of that?

A. $500.00. Also note No. 18032 discounted on March 16, 1923, for $500.00 and no offset credit of entry appears on the books of the bank. Also note No. 18043 discounted on March 19, 1923, for $500.00 proceeds were credited to the account of W. L. Lewis. Note No. 18064 discounted on March 26, 1923, proceeds were credited as follows: To the following, account A. E. Lewis, $500.00, W. L. Lewis, $500. Note No. 19002 for $1,000.00 discounted on April 5, 1923, no record of credit entry appears on the books of the bank.

Q. What was the amount of that note?

A. $1,000.00. And on January 2nd, 1923, took up note of $33,000, No. 16,027. That was a note that was increased to $33,000. The increase of $25,000 was credited to the account of W. L. Lewis.

Q. Now, do the total of those notes you read make the $34,000? A. Makes $35,000.

Q. $35,000. Well, was there a $35,000 note made before this $34,000 note?

A. Yes, sir, $1,000 had been paid between May 16, 1923, and July.

Q. The date of the $35,000 note was May 16, '23?

A. Yes, sir.

Q. And the $34,000 note, which is Government's Exhibit No. 34, is a renewal of that note, with a reduction of $1,000 on it?

A. Yes, sir. Pardon me, just a second, Mr. Davidson. Those notes that I have just read where they were credited to the account of W. L. Lewis amount of $36,500, and a $35,000 note, No. 20,047, and a charge to that account of A. E. Lewis paid those notes.

Q. I see. Now, on this Ed Soph note of $33,000. Now, that $33,000 note of Ed Soph's took up two notes, one of $18,000 and one of $15,000? A. Yes, sir.

Q. What was the date of the $15,000 note?

A. February 4, 1922.

Q. Was that new note or a renewal?

A. Let's see now. That was a new note on that day.

Q. What was the date of the $18,000 note?

A. $18,000 note? April 26, 1922.

Q. Now was that a new note or a renewal of another note?

A. That was undoubtedly a renewal of another note. With regards to the transactions that took place on that day, April 26, 1922, we were unable to reconcile the transactions as a $2,800 difference appeared in there.

Q. The books balanced on that day, didn't they?

A. The books balanced, yes, sir.

Q. But you think, from an examination of the books, that that was a renewal of other notes?

A. Well, I would not want to say "I think." We were unable to reconcile. The $2800 may have been cash, but the books of the bank settled on that day.

Q. There were notes that were marked off of the books of the bank as paid that day, weren't there? A. Yes, sir.

Q. What were the amounts of those notes?

A. The notes on that day were Note No. 9733, Edward Soph Company, $1400; note No. 9428, Edward Soph & Company, $19,000; note No. 9526, Edward Soph & Company, $7,500; note No. 9874, Edward Soph & Company, $2500; note No. 9087, Edward Soph & Company, $9,000; note No. 9508, Edward Soph & Company, $1,000.

Q. And what is the total of those notes? A. $40,400.

Q. $40,400. Now, don't the books of your bank show that $15,000 note and the $18,000 note were both renewal notes of previous indebtedness, including that $40,000? A. Yes, sir.

Q. Now, when were the notes made that aggregated that $40,000? A. I will have to trace them back.

Q. Haven't you already done it?

A. No, sir. Oh, I have traced those notes back on my working papers, yes; I can give you those dates.

Q. I am trying to find out, Mr. Genau, when the original transaction occurred when the money went out of the bank on the Soph transaction.

A. All right. Note No. 9733 was originally discounted on November 7, 1921, $2,000; a payment on November 7, 1921, of $600 was made, leaving the note in the amount of $1,400. Note No. 9428, for $19,000 was discounted on June 24, 1921. Note No. 9526 was originally discounted on August 6, 1921, for $14,000. Several payments were made, reducing the same to $7500. Making a total of $34,400. Note No. 10,049, was originally discounted as note No. 9896 on February 4, 1922, for $15,000. It was renewed on April 28, 1922, as note 10,049, for $15,000. Note No. 9087 was originally discounted as note No. 8778 on October 8, 1920, for $3500. A payment was made on February 3, 1921, for $5,000, reducing same—I mean was increased—it was increased on October 11, 1920, making the note $9,000. Note No. 9508 was discounted on July 27, 1921, for $1,000. Note No. 9874 was discounted on January 23, 1922, for $2500.

Q. Well now, there was no money went out of the bank on any of those Soph transactions since prior to June 24, 1921, was there? A. No, sir.

Q. Now take that McDonald transaction and tell us from your examination of the books of the bank when the money went out of the bank on the original transaction in that case?

A. The McDonald note for $12,225.00 was discounted on November 3, 1919, and the proceeds were credited on that date to the Houston-Fibele Company.

Q. And the increase in the James McDonald note was due to the taking up of the Hugh McDonald note for $12,500, wasn't it? A. Yes, sir.

Q. Now, when was the Hugh McDonald note originally made?

A. The Hugh McDonald note was originally made on November 3, 1919.

Q. Now, there was no money went out of the bank on either one of those McDonald notes since November, 1919, was there? A. No, sir.

Q. Now, Mr. Genau, the Mason Kittess note was discounted on December 18, 1922, wasn't it? A. Yes, sir.

Q. And on that same day the note of A. R. Mitchell for $13,000.00, or on the following day the note of A. R. Mitchell for $13,000.00 was marked off as paid, wasn't it? A. Yes, sir.

Q. Now, the books of the bank show that on the same date the Mason Kittess note was discounted the cashier's check for $15,000.00 was issued payable to the order of A. R. Mitchell, doesn't it? A. Yes, sir.

Q. The books of the bank show the cashier's check was paid on the following day, doesn't it, and on the same date that the A. R. Mitchell note went out? A. Yes, sir.

Q. What do the books of the bank show that A. R. Mitchell came into the bank?

A. A. R. Mitchell and Pauline Mitchell?

Q. Yes. A. On November 29, 1922.

Q. That was the first time it came into the bank?

A. Yes, sir, according to the books.

Q. Discounted on that day? A. Yes, sir.

Q. Now, you cannot tell from the books of the bank where the difference between the $15,000.00 and the $13,600.00 on the A. R. Mitchell note, went can you?

A. No, sir, there is no record.

Q. No record of that. Do the books of the bank show any other notes of A. R. Mitchell prior to 1922?

A. I didn't trace any other notes.

Q. Look at No. 9209 on the discount register. A. Yes, sir.

Q. What is that?

A. Note No. 9209 is a note of A. R. Mitchell endorsed Pauline Mitchell, payable to W. L. Lewis for $10,000.00.

Q. Now, what is the date of that note?

A. The date of the note offered here on the discount register under time is March 16, 1921, discounted on March 29, 1921.

Q. Now, I will ask you if the books of the bank show whether or not any money went out of the bank on the A. R. Mitchell note of $13,600.00 in 1922, when you say it first went into the bank?

A. That note was sent up to the Liberty Central Trust Company of St. Louis.

Q. On that date? A. Yes, sir.

Q. Then there didn't any money go out of the Liberty National Bank on account of that note, did there?

A. The note was discounted at the Liberty National Bank and forwarded to the Liberty Central Trust Company of St. Louis. The proceeds as to—when they charge bills receivable and the credit I was unable to trace on that date.

Q. Well, if it was sent to the Liberty Central Trust Company on that note the Liberty National Bank got credit with the Liberty Central Company? A. Yes, sir.

Q. So the bank books show the note was discounted and at the same time the bank books show the Liberty Central Trust Company got the note on that date?

A. They received the note, yes, sir.

Mr. Davidson: I think that is all.

The Court: Stand down.

(Witness excused.)

Mr. Dodds: For the record, Mr. Davidson. It is admitted that both of the defendants charged here in the indictment have been here in court during the trial.

Mr. Davidson: Yes, that is admitted.

Mr. Dodds: All right, the Government rests.

Mr. Davidson: I want to recall Mr. Powell for examination about these documents that we did not have here the other day.

C. F. POWELL

was recalled as a witness on behalf of the Government, for further cross examination, and having been previously duly sworn, testified as follows:

Cross Examination by Mr. Davidson.

Q. You are the same C. F. Powell who testified in this case on yesterday, I believe? A. Yes, sir, Saturday.

Q. Saturday? A. Yes, sir.

Q. I hand you a paper, which I will ask the reporter to mark for identification "Defendants' Exhibit No. 25," which is the original letter of which you exhibited a photostatic copy on your other examination, and ask you to examine it and state whether or not that bears your signature?

A. Yes, sir, I presume it does; it looks like it.

Q. That is the original letter that you wrote and sent to A. E. Lewis, isn't it?

A. I don't think I sent that letter; my secretary, I said sent that.

Q. Your secretary sent it? A. Yes, sir.

Q. But you signed it? A. Yes, sir.

Mr. Davidson: We offer in evidence, if your honor please, the original letter dated June 14, 1923, of which a photostatic copy was introduced the other day.

Q. Now, you said the other day that you thought the date had been changed on that letter? A. Yes, sir.

Q. You see now it is not, don't you? A. No, I don't.

Q. How's that?

A. No, I could not tell whether it was or not.

Q. You cannot say that it has been changed on that letter?

A. Well, it possibly has; I don't know.

Mr. Davidson: Well, let the jury examine it and see for themselves.

Q. Now, I hand you a paper which I will ask the reporter to mark as Defendants' Exhibit No. 26, and ask you to examine it and state whether or not that is a letter that you gave the Liberty National Bank at the time that you made your note for $25,000 to the bank? A. It is.

Mr. Davidson: We offer Defendants' Exhibit No. 26.

The Court: Very well.

Mr. Davidson: In evidence, if your honor please.

Q. Now, I hand you a paper marked for identification "Defendants' Exhibit No. 27," and ask you to examine it and state whether or not that is a balance sheet that was enclosed with your letter, which is Defendants' Exhibit No. 25?

A. That is a balance sheet that I made up, but I don't know whether it was enclosed with that letter or not. I don't know whether that is the one.

Q. This is the balance sheet that is mentioned in that letter, isn't it? A. I presume it is.

Mr. Davidson: We offer in evidence, if your honor please, Defendants' Exhibit No. 27.

The Court: Very well.

Mr. Dodds: No objection.

Mr. Williams: The record ought to show those last three exhibits as read.

The Court: They are received and read in evidence.

Mr. Davidson: Yes, sir.

The Court: Proceed.

Q. You did not send but one statement to the bank, did you—or balance sheet? A. No.

Q. Now, I hand you a note, which I will ask the reporter to mark as Defendants' Exhibit No. 28, and ask you to examine it and state whether or not that is a note you received from A. E. Lewis and W. L. Lewis at the time you made your note to the bank for $25,000? A. I presume it is.

Mr. Davidson: We offer in evidence, if your honor please.

The Court: Very well.

(Thereupon, Mr. Davidson reads to the jury Defendant's Exhibit No. 28.)

Mr. Davidson: Now, I think that is all, if your honor please.

The Court: Stand down.

Mr. Davidson: Now, we want to recall Mr. Koons for a question.

The Court: Very well.

R. A. KOONS

was recalled as a witness on behalf of the Government for further cross examination, and having been previously duly sworn, testified as follows:

Cross Examination by Mr. Davidson.

Q. Mr. Koons, in all of your dealings over the dividends from this stock involved in your transaction, I will ask you if A. E. Lewis did not contend at all times that he was entitled to the dividends?

A. You mean after the actual transaction? After the bank closed? He contended that then, yes, sir.

Q. Well, you never discussed it with him between the time the note was made and that time, did you? A. No.

Q. Every time you went out there to his house to see him about those matters he contended and claimed he was entitled to those dividends, didn't he?

A. Well, I think he contended that, yes, sir.

Mr. Davidson: Yes, sir, that is all.

The Court: Stand down.

Mr. Dodds: Mr. Koons, just one question.

Redirect Examination by Mr. Dodds.

Q. The words "To apply on note," were written in each instance on all of those checks before you gave the check into the bank, were they not? A. Yes, sir.

Q. Were on them then when they went into the bank?

A. I don't think it was on all of them; I think two or three of them it was not on.

Q. On all it was on? A. Yes, sir.

Mr. Dodds: That is all.

Cross Examination by Mr. Davidson.

Q. You put that on there for your own bookkeeping, didn't you? A. Yes, sir.

Q. And for nothing else.

Mr. Dodds: That is all.

The Court: Stand down. As I understand, the Government rests.

Mr. Dodds: The Government rests.

Mr. Davidson: Well, now, if your honor please, the defendants desire to file a motion for a directed verdict, and we would like to present those matters to your honor in the absence of the jury.

The Court: Now, of course at this time any motion here would be a mere motion in the form of a demurrer to the Government's evidence.

Mr. Davidson: That is the effect of it.

The Court: That brings before the court merely the evidence of the Government. Demurrers to the evidence, as you know, are not favored in the federal courts because when at the conclusion of all of the evidence then a motion for an instructed verdict brings the entire record of the case before the court for determination on that question. Your motion now will merely bring the evidence of the Government, without the record of the case at all.

Mr. Davidson: That is true, and the courts have held, if your honor please, and that is particularly true in the Eighth Circuit, that if the evidence is not sufficient that the court, on motion for a directed verdict at the close of the Government's testimony in chief, ought to sustain it, and we want to challenge the testimony in this case on these counts at this time.

The Court: Well, now, just briefly, what are your points?

Mr. Davidson: The first point, if your honor please, as to thirty-seven of these counts—well there are two of those counts they have not offered any evidence on at all. There is one of them on the Mrs. Suppes count, and one of them on the A. E. Duran count; they have offered no evidence on those counts at all. The other thirty-five of the first thirty-seven counts, based upon entries in the minute book. Now, this statute under which this prosecution was had was first passed in 1864, and from that date down to this there is not a record in any of the Federal Reports, and I have searched them all, where anybody was ever prosecuted for making false entries in the minute books of the bank.

Mr. Davidson: (Continuing) There has been a settled construction of the statutes during all of these years that applies to account books of the bank and not to the

minute books. The Supreme Court of the United States in the Coffin case in 35 L. Ed. which holds that a criminal statute must be strictly construed and that nobody comes within them unless it is plainly and undisputably in the terms of the statute. And that case is a landmark upon that doctrine and has been followed ever since. Now in the case of United States vs. Herrick, one of the district courts, I forget which one it is, it is in 204 Fed., the court there held that entries, entries of items of account, the books of the bank used in that statute means the books of account of the bank.

The Court: What case is that?

Mr. Davidson: That is in 204 Federal. That was Judge Bourland of Montana. The court says: Now, this was not a prosecution for making false entries in the minute book of the bank. There is no such case of that kind of any kind on record, but the court here was discussing what false entries were and the court says:

(Thereupon Mr. Davidson read from the authority above referred to.)

The Court: Oh, well, that is not true of the statute now.

Mr. Davidson: Yes, the statute now is one against making false entries.

The Court: Well, but it don't have to be alone in the books of account of the bank.

Mr. Davidson: It is the same statute passed in 1864. There aint any difference in it on that. Then the court proceeds:

(Thereupon Mr. Davidson read further from the authority cited.)

Now, the Prasilis case by Judge Thayer, a district court case. Now the court in this case was discussing a question of an erasure in the figures of an account in the book, and whether or not that was the making of a false entry within the meaning of the statute. (Thereupon Mr. Davidson read from the Prasilis case as cited.)

Now, there is another case here of United States versus Morse in 161 Fed. 429, decided by the Supreme Court of New York. Judge Hough wrote the opinion. Now in discussing that question the court says: (Thereupon Mr. Davidson read from the authority last above cited.)

Now, if your honor please, bearing in mind the unquestioned principle of law that no case is within the crim-

inal statute unless it is plainly and unmistakable within that statute, now here is a statute that has existed ever since 1864, and there is no record in the books anywhere and I challenge the Government to produce a single one, where any man has ever been prosecuted for making false entries in a minute book of the bank. And here are these three cases now, and the only ones construing what is meant by an entry in a book of the bank which show that it is a book of account and an entry on an item of account that is meant by the statute.

The Court: Well, it is not a determination, however, that one falsifying entries in an account of the bank. That was not the question under consideration before the court in the opinion.

Mr. Davidson: That is true, if your honor please, but there is no question in which that was before the court.

The Court: There is one here now.

Mr. Davidson: Yes, but when the judicial and executive departments of the Government proceed for sixty-two years without any attempt to make a charge of a false entry in a minute book, I say that is a construction of it and should not be at this late day.

Mr. Dodds: If I may interrupt my brother, I will say I myself have prosecuted such a case in the federal court for the Department of Justice in the courts of South Carolina and got a conviction.

Mr. Davidson: What I say is this. No such case got into any of the reported cases in the federal courts, district courts or circuit courts or Supreme Court of the United States.

The Court: This says: "Section 5209, the word entry is used with reference to books of account, reports and statements. When used in such connection Webster defines the word as an act of making or entering a record, that is to say the act of making a record of a fact or a transaction, but in section 5209 is obviously used to note the result of the act rather than the act itself. It signifies that which is written be it words or figures and if that which is so written misrepresents the fact or transaction which it was intended to define, then it is a false entry within the meaning of the statute.

The Court: Now, let me just tell you, briefly, where my mind has drifted in this case, and I have allowed evidence here for the purpose of bringing out the true situation in this institution. Of course, their own law required

the keeping of the minutes of the board of directors to show the action taken by the corporate body. They also, under their own law, were required to have a discount board that for the very purpose of preventing what the evidence shows in this case was done, that a couple of officers of the bank, without consulting anybody on earth, could take into this bank and handle as they pleased any kind of paper. Now, too, those who inspected the bank, when they came to look at the minute book they saw that this discount committee was passing upon the accounts—upon the bills purchased—the notes, and reporting to the board of directors. The board of directors was examining and approving the report of the discount board, and there was no meeting whatever of the board, and no such a thing as a discount board. Now, it is no offense to make a false entry in a book of the bank. It is an offense to make a false entry in a book of the bank for the purpose of defrauding the member bank, or the general association or those transacting business with the bank, or making it for the purpose of deceiving those who exercise supervisory control over the institution. Now, suppose these minutes were kept in this manner and they were kept for the purpose of deceiving the Comptroller of the Currency and his agents from the paternal institution as it is, of which it is a member, in inspecting the bank, to make them think that there were boards of directors that were functioning here and examining into the affairs, it being in a sense a governmental institution, and that a discount committee was passing on this paper; suppose that these books were kept and what is recorded in them was recorded with the very intent of deceiving those who inspected the bank; suppose it was written up there or caused to be written up for that precise purpose, in order to get entire control of the bank into their hands, so no one could object to it and no one could know what was being done, as appears—some evidence that tends to show that. Now, this does not limit the transactions to the ledger or the books really of account of the bank, but to making false entry in any book kept by the bank, of course if made only with intent to deceive someone who has a right to know the truth, or to defraud someone dealing with the institution. Now, of course, all of this evidence that is not pertinent to these transactions at all, I have allowed to be introduced solely to show the intent with which these minutes were made up and what they recorded. Anyone examining could go to the book and see that the boards were functioning regularly, the discount board was functioning regularly, would not inquire into those affairs.

But these one-man banks generally lead to trouble, and the very purpose of the regulation of the national banking act is that the board of directors shall be there and pass on these matters, and shall meet and consult and know what was going on. Here we have directors of the bank that knew no more about what was done in that bank than you did or I did, and sit here and tell the court boldly, "We were not there; did not have any director's meeting—took an oath to conduct the affairs, and yet not there at all—did not know anything about what was going on." Of course, directors cannot direct in that manner and escape liability. Now, there is a thought in my mind. Now, of course this language is quite broad, and I have examined this question—I have not found any case that is on it. Of course, so much of the act as we are concerned with here reads: "Any officer, director, agent or employe of any federal reserve bank or any member bank, as defined in the Act of December 23, 1913, known as the Federal Reserve Act, who makes any false entry in any book, report or statement of such federal reserve bank or member bank, with intent in any case to injure and defraud such federal reserve bank or member bank, or any other bank, body politic or corporate, or any individual person, or to deceive any officer of such federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such bank—." I can see how that I would, with a little experience in these matters, if I was going into a bank to examine one, I would want first to know, are the officers of this bank being controlled by its board of directors? I would look to the minutes to see whether they held any meetings regularly, and what came before them. I would want to know whether the discount committee invested the money of the bank with diligence, and I would want some record of that, of the daily reports, or whatever they are, of the discount committee to the board of directors. Then I would know whether they were diligent in their business or not. So——

Mr. Davidson: You would not know then, if your honor please, whether there was anything wrong in the bank or not.

The Court: Well, I would certainly rely on what I found written there about it.

Mr. Davidson: Yes.

The Court: Unless I found out to the contrary.

Mr. Davidson: Yes, and your honor might want to

get those things for your own benefit, but has Congress made it a penal offense to do those things? That is the question.

The Court: Well, now, without commenting on the evidence here, there is evidence here, at least I will say that tends to show that the corporation was functioning like corporations should. They are trustees for their stockholders, and when the public's money is put in there they are governmental agencies, so the purpose of a board of directors of a corporation is to direct its affairs. Of course, these men were not doing it, but everything was kept here as though, and the inspectors who examined had the right to rely on that thing being done. Now suppose these entries were false, and suppose they were made there in this minute book with the intent of deceiving the inspectors and of getting the affairs of the bank in such shape that one or two officers of the bank would handle its affairs and its money and its credits just as they pleased, and without any check on them. Well, that cannot be done.

Mr. Davidson: If your honor please, let me suggest this to you: That the courts have drawn a distinction between what is to be accomplished by the making of false entries, and the other provisions of the statutes punishing for other violations: for instance, the courts have held that it is a penal offense to misapply the funds of the bank.

The Court: Yes.

Mr. Davidson: But if that is an actual transaction, the making of an entry in the books of the bank showing it is not a false entry.

The Court: And unless these defendants are responsible for this being done, and did know that that was put out to the persons interested in the association which was false and not true, and for some purpose of their own—that it, intending to defraud somebody or getting in position where they can defraud them or deceive somebody, they would not be responsible anyhow.

Mr. Davidson: Now, you take Ruling Case Law, here, under this subject, "False entries in books of the bank;" they start out and say, under the statutes of some states and under the National Banking Act, the making of false entries in the account books of the bank is made punishable.

The Court: Yes.

Mr. Davidson: But that is as far as it goes.

The Court: Well, that is what that says, but I am looking at this Act of Congress.

Mr. Davidson: Your honor is looking—if your honor please, pardon me, your honor is looking at what you think that act ought to be.

The Court: No, I am looking at what I think it says.

Mr. Davidson: Well, that is not what the decisions of the court in construing it have said; they have limited it to books of account.

The Court: Now, if any decision controlling here, either from the Supreme Court or from the Court of Appeals of this circuit, if they had limited the language here to mere entries in account books, why of course the court would follow it, but the Congress used broader language that this falls well within, because every corporation must keep a minute book.

Mr. Davidson: But the minute book, if your honor please, does not reflect the financial condition of the institution; that is the difference.

The Court: No, it may tend to, though.

Mr. Davidson: It may affect the financial condition of it, but it does not reflect the financial condition of it, and that is the purpose of the National Banking Act, to keep all straight and have a correct report of the financial condition, both for the public and for the Comptroller of the Currency.

The Court: Not only that.

The Court: Have to also know that the corporation is functioning as a corporation.

Mr. Davidson: If your honor please, the statute makes directors civilly liable for a lot of things that are not criminal. A director can do many things wrong to the extent that he is liable civilly, but he is not liable criminally.

The Court: If the director happens to be a managing officer he falls under this act.

Mr. Davidson: Yes, but the National Bank Act itself makes a director civilly liable for things that he is not liable criminally and the things you refer to might make him liable civilly but they would not be liable criminally.

The Court: I asked the witness the other day whether he had been proceeded against in any manner, and of course you have to go much further than merely making

a false entry. You have to make the false entry with the intent to defraud and deceive the Comptroller of the Currency and his agents.

Mr. Davidson: Now, I want to call your honor's attention to one other thing that is raised in this motion for a directed verdict and that is that they do not charge any false entry in this indictment. They just allege a conclusion and they do not set up what the entry is and we contend in order to make it a stated cause of action they have got to set up the entry they charge to be false.

The Court: What does the indictment say?

Mr. Davidson: I just want to read, your honor, what the indictment says on there.

The Court: Of course, again I will say it will hardly be proper for me to get around to the position of reruling on the motion to quash or a demurrer to the indictment.

Mr. Davidson: I know, but your honor has got to face that sooner or later and the courts have held and the Circuit Court of Appeals for this district, if on a motion for a directed verdict the court finds the indictment does not state a cause of action it should be sustained.

The Court: That is true.

Mr. Davidson: The count says here: "Unlawfully, feloniously, knowingly, wrongfully and willfully with intent on their part, and on the part of each of them, to injure and defraud said banking association, and divers other persons, companies and corporations to the grand jurors unknown, and to deceive the other officers of said member bank, the Comptroller of the Currency of the United States and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, did make and cause to be made, a certain record of the meetings of its board of directors, and the minutes of the meetings of its stockholders, and then and there known and designated as, to-wit, Minute Book No. 2, on, to-wit, the aforesaid 20th day of March, 1923, a certain false entry on that certain page of said minute book numbered 23, which said entry then and there was, and is, false, and which said entry, the said Allie E. Lewis and William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect declare that the board of directors of said association, at a meeting of said board of directors held on, to-wit, March

20, 1923, and approved a report of the Discount Committee of said association on all loans made by said association subsequent to February 27th, 1923, and prior to said 20th day of March, 1923, being loans numbered 17-086 to 18050, inclusive, in the books and records of said bank; whereas, in truth and in fact, no such report was approved by said board of directors."

We are entitled to have the entry set out in the indictment that is charged with being false and they cannot charge us lawfully by inference and innuendo. That is a mere conclusion of the pleader, and there is not anywhere in there where they set out what the entry is.

The Court: Well, if I state you stated that you did certain things you declared them or under your corporeal oath testified nothing of the kind, you negatived by saying nothing of the kind happened at all but was utterly false, is not that sufficient to raise an issue there and a very positive issue?

Mr. Davidson: No, if your honor please. Now, they introduced a minute book here. For instance, now you take that first one on the 20th of March, 1923.

The Court: Of course nothing I think you have said would end the trial as to all of the counts anyway because these reports to the Comptroller, nothing you have said on that.

Mr. Davidson: No, I have another basis on that. I haven't discussed that yet. I am just discussing now the thirty seven counts based on the minute book.

The Court: It is true, is it not, that there are certain counts in this indictment on which you haven't offered evidence?

Mr. Dodds: No, if your honor please. It is true in two counts it was charged respectively, the one that Mrs. Suppes and one A. E. Duran were not present at the purported meeting of January 9, 1923. Now we didn't present the two witnesses. Mrs. Suppes and Mr. Duran, we couldn't get service on one and the other one was ill and sent a doctor's certificate but we maintain that we have introduced all the proof necessary to prove those two counts when we have proven there wasn't any stockholders meeting.

Mr. Davidson: Now, listen, there are three counts charged here, one purporting to show a meeting of the stockholders. They charge that is false in one count, and in separate counts they charge the false entry was show-

ing Mrs. Suppes present when she wasn't and in another count they say the minutes show A. E. Duran present when as a matter of fact, he wasn't there. Now, I say if they have shown a stockholders meeting wasn't held, which they haven't shown, still that would not——

The Court: If it showed no stockholders meeting in fact was held at all, wouldn't that show that the parties were not present at a stockholders meeting?

Mr. Davidson: No, I think not, if your honor please.

The Court: That would be a natural inference.

Mr. Davidson: Yes, but you cannot convict people on inferences unless they are very strong. Now, the only evidence on that question here is from certain people who say they were not there.

The Court: Well, we are not passing on the evidence, that is for the jury.

Mr. Davidson: I want to call your honor's attention to this. They had the actual minutes of March 20, 1923, which they could have set out in here as a thing not entered "Approved a report of the discount committee of said association on all loans made by the association subsequent to February 27, 1923, and prior to said 20th day of March, 1923, being loans numbered 17086 to 19054 inclusive." Now that is the entry they tried to prove to bring us under this indictment and they don't set out in the indictment what the entry is and we are entitled to have that done under the law of this land. Now that is true on minute book count.

Now on the false entry count, if your honor please, we say that even though the things were true that they charge, even though it was true, which we deny, because we have contended all the time this Ballard and Koons' dividend belonged to A. E. Lewis, but even though they didn't belong to A. E. Lewis, and they belonged to Ballard and Koons and were paid to the bank, purported to have been paid to the bank, but A. E. Lewis took the money under his claim of ownership and they didn't go to the bank, that the report to the Comptroller of the Currency must reflect the actual thing that happened and if A. E. Lewis under those circumstances should be guilty of the misapplication of the moneys of the bank, he would not be guilty at the same time of making a false report to the Comptroller of the Currency.

The Court: I suspect this: That the report made to the Comptroller of the Currency is for the purpose of

showing the exact financial status of the institution and if money that was paid into the institution by a debtor to apply on his note was by some one in authority diverted and not applied on the note that the statement that that note as it stood wihtout any credits on it would not be so far as the maker of the note was concerned a truthful statement. It might be what the record would show but it doesn't reflect the true financial condition of the institution.

Mr. Davidson: Now, if your honor please, that is the distinction. There are other provisions in this statute which denounce and penalize the misapplication of funds. There is another provision against the making of false entries which require that the Comptroller of the Currency shall know the exact condition of the books of the bank. Now, I want to just call your honor's attention to a case here——

Mr. Dodds: I will just call counsel's attention to the fact it doesn't say his knowledge of the condition, it has nothing to do with the condition of the books of the bank.

Mr. Davidson: All right now, listen. Just take this case here of Koons. Now here is a controversy between these people. Let's for the sake of argument say Koons is entitled to these dividends and Lewis was not; he took these checks to A. E. Lewis and A. E. Lewis got the money on them and kept it himself; the bank didn't get that false entry in the report to the Comptroller of the Currency had have shown the bank did get it, it would have been false entry in the record to the Comptroller of the Currency because the bank didn't get the money.

The Court: Yes, but nevertheless, if this man believed he was paying his note or reducing his note and he paid the money in for that purpose, had no knowledge but what his debt was being paid, then if somebody in the bank appropriated the money and did not apply it to that——

Mr. Davidson: Prosecute for misapplication of the funds of the bank and the statute provides for it.

The Court: But as you said it takes the bank's money.

Mr. Davidson: No, if your honor please, if the bank didn't get the money, the bank didn't get it, that is all there is to it.

The Court: That is very true if he didn't get credit on his account he would get it afterwards if he showed he

paid the money into this bank to apply on this note, no matter whether actually applied or not, he would get his credit unless the note came into the hands of some innocent purchaser for value.

Mr. Davidson: But you get back then to the misapplication part of this statute.

The Court: Oh, suppose I had a note in the bank for $10,000.00 and I had gone in there and given them my check to pay one half of it, $5,000.00, believing I was only owing the bank $5,000.00, and someone had let my note stand without giving credit on it whose duty it was to credit it and took my $5,000.00 and statement was made to the Comptroller of the Currency that my note was for the full $10,000.00, that would certainly be a false statement.

Mr. Davidson: If your honor please, the offense there would be a misapplication of those funds.

The Court: I think it would constitute an offense of that kind, but might also constitute another offense.

Mr. Davidson: Now, this decision of United States vs. Young, from the United States District Court of Alabama and this is by Judge Jones. This is a prosecution for making false entries. (Thereupon Mr. Davidson read from the authority last above cited.)

The Court: All he had done there was to make an entry in regard to some worthless paper. He recorded exactly what was done in the matter, but his real offense was allowing the money of the bank to get away for something that he knew was worthless; that was misapplication of funds.

Mr. Davidson: Yes, take this case if your honor please. Now, as a matter of fact, the money on these checks didn't go into the bank. The money was taken out of the bank on these checks and went to somebody else;

The Court: You must remember this fact—you have to look at it in its different relations. Here is a debtor of the bank has rights and the depositor has rights, the public has just as much rights as the bank or others, so if I go to an officer of a bank, an active officer of a bank and hand him my check for a specific purpose then the bank gets the money, I don't care whether it actually goes into the coffers of the bank. That is the bank's money because he is acting for the bank, and if I don't get credit I can force him under the law because it is a good payment.

The Court: No, of course I concede you have to prove a long ways in these matters.

Mr. Davidson: Now, I want to call your honor's attention to one case of the Supreme Court of the United States, and that is the case of Coffin against the United States, in 35 Law edition——

The Court: It is one of the leading cases on this subject, and I have studied it on many different trials.

Mr. Davidson: Yes, sir. What I want to read to you is very brief.

"Laws which create crime ought to be so explicit that all men subject to their penalties may know what it actually is their duty to avoid,"——

No, that is not the Coffin case. That is in 39 Law Edition. I was making a mistake myself.

"Whilst we consider the charges asked were in some respects unsound, yet the exception reserved to the charge actually given by the court was well taken, because therein the questions of misapplication and false entries are interblended in such a way that it is difficult to understand exactly what was intended. We think the language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its ertry exactly as it occurred constituted a false entry; in other words that an entry would be false though it faithfully described an actual occurrence unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place and is entered exactly as it occurred.

The Court: I agree with that exactly.

Mr. Dodds: That is right; that is right.

Mr. Davidson: Well, now, you take the Kittess note, the Kittess note was taken into the bank and discounted and the proceeds now paid out——

The Court: Now, wait; I suppose I take the evidence, so far as we have gone on that transaction, what was it? The books of this bank were not made to show the actual transaction with Kittess at all. Kittess went in there to help a friend; put up his note, under his testimony, to

help out a friend who was indebted to the bank, put there as collateral security, and an officer of the bank comes now and discounts that note to the bank, which he could not have done had they a discount committee in a thousand years, and does not carry out the contract that Kittess made when he put the note there at all. Of course I have not heard from the other side. But he had no right to ever take that note into the bank as a debt of Kittess at all, but had the right to hold it there for the payment of Mitchell's debt and that is all. Kittess, under his evidence here, was very badly dealt with.

Mr. Davidson: If your honor please, now——

The Court: Now, of course, I have not heard from the defendants at all. I don't know anything about it. I only heard one side, but taking what we have——

Mr. Davidson: Well, now, that would be, so far as the misapplication of these funds was concerned, but the thing that was actually done there was the discounting of that note, the withdrawal of that payment on the A. R. Mitchell note. Whether that was right or proper, or not, was a different question.

The Court: Oh, well, but Kittess never intended to discount his note to the bank. It never was offered there for discount.

Mr. Davidson: That is according to his testimony.

The Court: Yes, of course I am just merely saying what we have here, but an officer of that bank could not go down here without his consent and make him liable for $15,000 to that bank when it was merely hypothecated there as security for Mitchell. It takes two to make a contract.

Mr. Davidson: That is true, if your honor please, but, your honor, when you came to make your report to the Comptroller of the Currency, the law is that it shall report the actual conditions of the books of the bank, and if it does not do it, it is a false entry.

The Court: Well, now, no, no, no; now, what was the real condition? Of course I am talking now about the evidence. What was the real condition? The real condition was that that note of Kittess of $15,000 was collateral security to Mitchell's note because you had to have the consent of Kittess, who put it in there, before it could be taken by the bank.

Mr. Davidson: And the bank would be liable to Kittess under those circumstances if they did anything else

with it; but, if your honor please, that is not the question involved here.

The Court: No.

Mr. Davidson: Because we are concerned here with the report to the Comptroller of the Currency, as to what the condition of the bank was on a certain date.

The Court: Yes, now, but suppose that the testimony on that subject so far was the actual fact, that this was there as collateral security to Mitchell's debt, then no matter what the bank did, it could not hold it and could not discount it, could not take it for the purpose for which he left it there and discount it and make it a note of the bank at all without his consent.

Mr. Davidson: Let me ask your honor this question: I will put another case——

The Court: Now, wait until I finish.

Mr. Davidson: All right, go ahead.

The Court: Then, if that be true, then the loans and discounts is counted as one of the items in the loans and discounts, and suppose it augmented the loans and discounts with $15,000 and was done for the purpose of deceiving the Comptroller of the Currency in the statement made to him; that there were that much, when it was $15,000 less? Of course, if he could not be held on it, why it wasn't paper of the bank. A one-sided transaction can't do those things; that is the trouble.

Mr. Davidson: Now, let's suppose here that a bank robber gets into the bank and gets $10,000 of cash out of it, and the next day they have got to make a report to the Comptroller of the Currency and the bank hasn't got that ten thousand dollars, although it is entitled to it, it belongs to it; if they ever can find it they can get it, but it hasn't got it there in its bank; they can't make a report to the Comptroller of the Currency that it is there.

The Court: No.

Mr. Davidson: If they did, it is a false entry.

The Court: Absolutely.

Mr. Davidson: Well, the same would be true of a note or any other asset of the bank.

The Court: It is not there, though. In this transaction, by some one-sided dealing, and the other party not there, why there is no agreement made that it shall become a note of the bank, or the maker of the note shall owe the bank. He says I will stand good to the extent of $15,000

that my friend Mitchell will pay this debt; that is what it is. If Mitchell don't pay his note or enough on it to pay the debt the bank can hold that. It is just like any other pledged property. They can't hold him liable for $15,000, ..and the real transaction wasn't not recorded at all.

Mr. Davidson: Well, I can't draw the—I don't think your honor draws the distinction between three propositions; the bank's civil liability on a transaction of that kind, the criminal liability for misapplication of a thing of that kind, and the offense of making a false entry in a report to the Comptroller of the Currency. Now, a man ought not to be prosecuted, and I don't think he can lawfully be prosecuted for both misapplication and false entry based on the same act.

The Court: No, I don't think so either.

Mr. Davidson: I don't either.

The Court: I don't either. But there is nothing—you take these entries in regard to the conduct of the bank, the discount committee's report, the minutes in regard to the meetings of the board of directors and stockholders, you certainly cannot—officers of an institution like this put up a wholly false and fictitious and forged state of facts there on its records without being liable some way.

Mr. Davidson: Civil liability, f your honor please.

The Court: Oh, more than that.

Mr. Davidson: Now, the Act of Congress makes directors civilly liable for a breach of their duty in directinf the affairs of the bank.

The Court: I am not talking about the directors. Now, I will tell you what I think I will do; now, there is not going to be any failure to—any change here in regard to what—any of the false entries consist and what must be done and the purpose for it all. This jury will never get any charge on any misapplication of the funds of the bank, because there is no such a charge here. But the latter part of the counts of this indictment here, of course, are much farther off in proof, much more difficult to prove and further off in proof than these minutes in this minute book.

Mr. Davidson: Well, now, I want to say this thing further to your honor; that the evidence in this case as it stands now wholly fails to show that either of these defendants, especially A. E. Lewis, ever made the entries

in the reports to the Comptroller of the Currency or directed them .

The Court: I say, you are much farther off, the proof is, in regard to those than you are if it be an offense to make a false statement, or something occurring in these minute books in regard to it, and I am inclined to hold that would be an offense. There is much more evidence here on the first questions of the indictment than there are on the last. No question about that. But I think I will do this: I think I will hear the matter through.

Mr. Davidson: Just a moment, if your honor please. if your honor please, I think your honor recalls from this testimony that the testimony nowhere connects A. E. Lewis with making any of these entries in this minute book, none of them.

Mr. Williams: There is not a scintilla——

Mr. Davidson: Not a scintilla of testimony connecting him with the making of the entries.

Mr. Williams: Not a word.

Mr. Davidson: It is not an offense to make a false report to the Comptroller of the Currency, or attest it and verify it; the offense is making the entry. It is no offense to make a false report; that is settled by numerous decisions. It is the making of the entry.

The Court: I am not now speaking about the weight of this evidence at all, and that matter would be to address to the jury, but I think we will go through with the case and see how it stands in the end. Call your witnesses for the defense.

Mr. Davidson: If your honor please, I want to get this record straight.

The Court: Very well. Take an exception to the ruling on the motion.

Mr. Davidson: I want to file the motions for a directed verdict, separate motions for each defendant.

The Court: Very well.

Mr. Davidson: And save an exception.

The Court: Very well, to the ruling.

Mr. Davidson: To the court's ruling.

The Court: You desire, I suppose, now, to make a statement.

Mr. Davidson: I do, if your honor please.

And, at this time, upon the close of the Government's case in chief, there was filed on behalf of the defendant, A. E. Lewis, his motion for a directed verdict of not guilty upon each count of the indictment in said case.

Which motion is in the words and figures following, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346, Criminal.

Motion of Defendant Allie E. Lewis for a Directed Verdict of Not Guilty.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 1 of the indictment in the above styled cause for the following reasons:

1. Count No. 1 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 1 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 1 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 1 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment do not constitute the making of

a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 1 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 1 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 1 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

2.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 2 of the indictment in the above styled cause for the following reasons:

1. Count No. 2 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 2 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 2 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 2 of said indictment that the false entry therein charged to have been

made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 2 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 2 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 2 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

3.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 3 of the indictment in the above styled cause for the following reasons:

1. Count No. 3 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to de-

termine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 3 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 3 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 3 of said indictment that the false entry therein charged to have been made was not an item of account, but that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 3 of said indictment there is no substantial evidence of the facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 3 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 3 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

4.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 4 of the indictment in the above styled cause for the following reasons:

1. Count No. 4 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 4 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 4 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 4 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 4 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 4 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 4 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

5.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 5 of the indictment in the above styled cause for the following reasons:

1. Count No. 5 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 5 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 5 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 5 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 5 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 5 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 5 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

6.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 6 of the indictment in the above styled cause for the following reasons:

1. Count No. 6 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 6 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 6 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 6 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 6 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 6 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 6 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

7.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 7 of the indictment in the above styled cause for the following reasons:

1. Count No. 7 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 7 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 7 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 7 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 7 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 7 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 7 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

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8.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said

Allie E. Lewis upon Count No. 8 of the indictment in the above styled cause for the following reasons:

1. Count No. 8 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 8 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 8 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 8 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 8 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 8 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 8 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed.

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

9.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 9 of the indictment in the above styled cause for the following reasons:

1. Count No. 9 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 9 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 9 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 9 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 9 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 9 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 9 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

10.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 10 of the indictment in the above styled cause for the following reasons:

1. Count No. 10 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 10 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 10 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegatoins of Count No. 10 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this

construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 10 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 10 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 10 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

11.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon County No. 11 of the indictment in the above styled cause for the following reasons:

1. Count No. 11 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 11 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 11 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 11 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 11 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 11 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 11 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

12.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 12 of the indictment in the above styled cause for the following reasons:

1. Count No. 12 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this de-

fendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 12 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 12 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4 It appears from the allegations of Count No. 12 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 12 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 12 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 12 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the ter

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ritorial body of the district as it existed at the time the of fense is alleged to have been committed.

13.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 13 of the indictment in the above styled cause for the following reasons:

1. Count No. 13 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 13 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 13 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 13 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 13 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 13 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 13 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

14.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 14 of the indictment in the above styled cause for the following reasons:

1. Count No. 14 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 14 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 14 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 14 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of

a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 14 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 14 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 14 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

15.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 15 of the indictment in the above styled cause for the following reasons:

1. Count No. 15 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 15 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 15 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 15 of said indictment that the false entry therein charged to have been

made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 15 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 15 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 15 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

16.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 16 of the indictment in the above styled cause for the following reasons:

1. Count No. 16 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to de-

termine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 16 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 16 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 16 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 16 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 16 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 16 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

17.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 17 of the indictment in the above styled cause for the following reasons:

1. Count No. 17 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 17 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 17 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 17 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 17 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 17 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 17 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

18.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 18 of the indictment in the above styled cause for the following reasons:

1. Count No. 18 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 18 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 18 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 18 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 18 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of the defendant.

6. Under Count No. 18 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 18 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

19.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 19 of the indictment in the above styled cause for the following reasons:

1. Count No. 19 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 19 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 19 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 19 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 19 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of the defendant.

6. Under Count No. 19 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 19 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed

20.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 20 of the indictment in the above styled cause for the following reasons:

1. Count No. 20 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 20 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 20 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 20 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 20 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 20 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 20 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

21.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said

Allie E. Lewis upon Count No. 21 of the indictment in the above styled cause for the following reasons:

1. Count No. 21 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 21 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 19 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 21 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 21 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 21 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 21 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed,

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

22.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 22 of the indictment in the above styled cause for the following reasons:

1. Count No. 22 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 22 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 22 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 22 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 22 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 22 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 22 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

23.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 23 of the indictment in the above styled cause for the following reasons:

1. Count No. 23 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 23 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 23 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 23 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard

to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 23 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 23 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 23 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

24.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 24 of the indictment in the above styled cause for the following reasons:

1. Count No. 24 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 24 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 24 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 24 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 24 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 24 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 24 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

25.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 25 of the indictment in the above styled cause for the following reasons:

1. Count No. 25 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this de-

fendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 25 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 25 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 25 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 25 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 25 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 25 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the ter

ritorial body of the district as it existed at the time the offense is alleged to have been committed.

26.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 26 of the indictment in the above styled cause for the following reasons:

1. Count No. 26 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 26 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 26 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 26 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 26 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 26 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 26 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

27.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 27 of the indictment in the above styled cause for the following reasons:

1. Count No. 27 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 27 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 27 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 27 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in

this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 27 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 27 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 27 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

28.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 28 of the indictment in the above styled cause for the following reasons:

1. Count No. 28 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 28 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 28 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 28 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 28 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 28 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 28 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

29.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 29 of the indictment in the above styled cause for the following reasons:

1. Count No. 29 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another

prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 29 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 29 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 29 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 29 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 29 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 29 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

30.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 30 of the indictment in the above styled cause for the following reasons:

1. Count No. 30 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 30 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 30 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 30 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 30 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 30 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 30 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

31.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 31 of the indictment in the above styled cause for the following reasons:

1. Count No. 31 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 31 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 31 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 31 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 31 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 31 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 31 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

32.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 32 of the indictment in the above styled cause for the following reasons:

1. Count No. 32 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 32 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 32 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 32 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 32 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 32 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 32 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

33.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 33 of the indictment in the above styled cause for the following reasons:

1. Count No. 33 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 33 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 33 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 33 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 33 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 33 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 33 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

34.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said

Allie E. Lewis upon Count No. 34 of the indictment in the above styled cause for the following reasons:

1. Count No. 34 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 34 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 34 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 34 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 34 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 34 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 34 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed,

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

35.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 35 of the indictment in the above styled cause for the following reasons:

1. Count No. 35 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 35 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 35 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 35 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 35 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 35 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 35 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

36.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 36 of the indictment in the above styled cause for the following reasons:

1. Count No. 36 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 36 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 36 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 36 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard

to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 36 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 36 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 36 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

37.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 37 of the indictment in the above styled cause for the following reasons:

1. Count No. 37 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 37 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 37 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 37 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 37 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 37 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 37 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

38.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 38 of the indictment in the above styled cause for the following reasons:

1. Count No. 38 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this de-

fendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 38 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 38 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4. Count No. 38 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 38 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 38 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 38 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

39.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 39 of the indictment in the above styled cause for the following reasons:

1. Count No. 39 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 39 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 39 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4. Count No. 39 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 39 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 39 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 39 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the

same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

40.

Defendant Allie E. Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said Allie E. Lewis upon Count No. 40 of the indictment in the above styled cause for the following reasons:

1. Count No. 40 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 40 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 40 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4. Count No. 40 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 40 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 40 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 40 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

DAVIDSON & WILLIAMS,
J. B. CHAMPION,
Attorneys for Defendant.

(Indorsed upon said Motion for Directed Verdict appears:) Filed Jan. 25, 1926. W. V. McClure, Clerk U. S. District Court.

And, at this time, upon the close of the Government's case in chief, there was filed on behalf of the defendant, William Lloyd Lewis, his Motion for a Directed Verdict of Not Guilty upon each count of the indictment in said case;

Which motion is in the words and figures following, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346, Criminal.

Motion of Defendant William Lloyd Lewis for a Directed Verdict of Not Guilty.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 1 of the indictment in the above styled cause for the following reasons:

1. Count No. 1 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 1 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 1 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 1 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment do not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 1 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 1 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 1 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

2.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty

as to said William Lloyd Lewis upon Count No. 2 of the indictment in the above styled cause for the following reasons:

1. Count No. 2 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 2 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 2 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 2 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 2 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 2 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 2 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed,

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

3.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 3 of the indictment in the above styled cause for the following reasons:

1. Count No. 3 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 3 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 3 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 3 of said indictment that the false entry therein charged to have been made was not an item of account, but that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 3 of said indictment there is no substantial evidence of the facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 3 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 3 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

4.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 4 of the indictment in the above styled cause for the following reasons:

1. Count No. 4 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 4 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 4 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 4 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard

to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 4 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 4 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 4 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

5.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 5 of the indictment in the above styled cause for the following reasons:

1. Count No. 5 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 5 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 5 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 5 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 5 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 5 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 5 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

6.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 6 of the indictment in the above styled cause for the following reasons:

1. Count No. 6 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this de-

fendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 6 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 6 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 6 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 6 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 6 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 6 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the ter-

ritorial body of the district as it existed at the time the offense is alleged to have been committed.

7.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 7 of the indictment in the above styled cause for the following reasons:

1. Count No. 7 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 7 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 7 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 7 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 7 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 7 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 7 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

8.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 8 of the indictment in the above styled cause for the following reasons:

1. Count No. 8 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereof, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 8 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 8 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 8 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in

this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 8 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 8 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 8 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

9.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 9 of the indictment in the above styled cause for the following reasons:

1. Count No. 9 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 9 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 9 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 9 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 9 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 9 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 9 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

10.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 10 of the indictment in the above styled cause for the following reasons:

1. Count No. 10 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another

prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 10 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 10 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegatoins of Count No. 10 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 10 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 10 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 10 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

11.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 11 of the indictment in the above styled cause for the following reasons:

1. Count No. 11 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 11 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 11 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 11 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 11 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 11 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 11 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

12.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 12 of the indictment in the above styled cause for the following reasons:

1. Count No. 12 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 12 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 12 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 12 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 12 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 12 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 12 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

13.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 13 of the indictment in the above styled cause for the following reasons:

1. Count No. 13 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 13 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 13 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 13 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 13 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 13 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 13 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

14.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 14 of the indictment in the above styled cause for the following reasons:

1. Count No. 14 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 14 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 14 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 14 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 14 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 14 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 14 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

15.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 15 of the indictment in the above styled cause for the following reasons:

1. Count No. 15 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this de-

fendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 15 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 15 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 15 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 15 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 15 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 15 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the ter-

ritorial body of the district as it existed at the time the offense is alleged to have been committed.

16.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 16 of the indictment in the above styled cause for the following reasons:

1. Count No. 16 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 16 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 16 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 16 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 16 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 16 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 16 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

17.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 17 of the indictment in the above styled cause for the following reasons:

1. Count No. 17 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 17 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 17 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 17 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in

this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 17 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 17 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 17 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

18.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 18 of the indictment in the above styled cause for the following reasons:

1. Count No. 18 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 18 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 18 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 18 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 18 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of the defendant.

6. Under Count No. 18 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 18 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

19.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 19 of the indictment in the above styled cause for the following reasons:

1. Count No. 19 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another

prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 19 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 19 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 19 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 19 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of the defendant.

6. Under Count No. 19 of said indictment the evidence is more consistent with the defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 19 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

20.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 20 of the indictment in the above styled cause for the following reasons:

1. Count No. 20 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 20 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 20 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 20 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 20 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 20 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 20 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

21.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 21 of the indictment in the above styled cause for the following reasons:

1. Count No. 21 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 21 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 19 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 21 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 21 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 21 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 21 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

22.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 22 of the indictment in the above styled cause for the following reasons:

1. Count No. 22 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 22 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 22 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 22 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 22 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 22 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 22 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

23.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 23 of the indictment in the above styled cause for the following reasons:

1. Count No. 23 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 23 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 23 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 23 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 23 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 23 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 23 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

24.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty

as to said William Lloyd Lewis upon Count No. 24 of the indictment in the above styled cause for the following reasons:

1. Count No. 24 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 24 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 24 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 24 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 24 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 24 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 24 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed,

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

25.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 25 of the indictment in the above styled cause for the following reasons:

1. Count No. 25 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 25 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 25 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 25 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 25 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 25 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 25 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

26.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 26 of the indictment in the above styled cause for the following reasons:

1. Count No. 26 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 26 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 26 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 26 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard

to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 26 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 26 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 26 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

27.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 27 of the indictment in the above styled cause for the following reasons:

1. Count No. 27 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 27 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 27 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 27 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 27 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 27 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 27 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

28.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 28 of the indictment in the above styled cause for the following reasons:

1. Count No. 28 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 28 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 28 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 28 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 28 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 28 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 28 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing

f said grand jury panel from any particular part of the ter-itorial body of the district as it existed at the time the of-ense is alleged to have been committed.

29.

Defendant William Lloyd Lewis comes now and moves he court to direct the jury to return a verdict of not guilty s to said William Lloyd Lewis upon Count No. 29 of the in-lictment in the above styled cause for the following reasons:

1. Count No. 29 of said indictment is so indefinite and un-ertain that it does not advise or sufficiently advise this de-endant of the charge which he is to meet, or give him a fair pportunity to prepare his defense thereto, or enable him to vail himself of a conviction or acquittal in defense of another rosecution for the same offense, or enable the court to de-ermine whether the facts there stated are sufficient to support conviction if a conviction should be had.

2. Count No. 29 of said indictment does not set out or suf-ciently describe the entry in the minute book of the Liberty ational Bank which is alleged to be false.

3. Count No. 29 of said indictment fails to state facts suf-cient to constitute a public offense under the laws of the Unit-d States, or a crime against the United States.

4. It appears from the allegations of Count No. 29 of said ndictment that the false entry therein charged to have been ade was not an item of account, and that the book of the iberty National Bank in which it is alleged to have been made as not a book of account, whereas "books" of the bank as sed in the statute under which said count is laid means books f account, and "entry" as used in the statute with regard books of the bank means an item of account; and that this nstruction of the statute has been settled and acquiesced in r the executive and judicial departments of the Government nce the enactment of the statute, and the facts alleged in is count of said indictment does not constitute the making of false entry in the books of the Liberty National Bank with-the meaning of the statute.

5. Under Count No. 29 of said indictment there is no sub-antial evidence of facts which exclude every other hypothesis t that of guilt on the part of this defendant.

6. Under Count No. 29 of said indictment the evidence is ore consistent with this defendant's innocence than with his ilt of the offense therein charged.

7. The evidence under Count No. 29 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

30.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 30 of the indictment in the above styled cause for the following reasons:

1. Count No. 30 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 30 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 30 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 30 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in

this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 30 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 30 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 30 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

31.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 31 of the indictment in the above styled cause for the following reasons:

1. Count No. 31 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 31 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 31 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 31 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 31 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 31 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 31 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

32.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 32 of the indictment in the above styled cause for the following reasons:

1. Count No. 32 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another

prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 32 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 32 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 32 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 32 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 32 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 32 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

33.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 33 of the indictment in the above styled cause for the following reasons:

1. Count No. 33 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 33 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 33 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 33 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 33 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 33 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 33 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn

from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

34.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 34 of the indictment in the above styled cause for the following reasons:

1. Count No. 34 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 34 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 34 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 34 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 34 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 34 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 34 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

35.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 35 of the indictment in the above styled cause for the following reasons:

1. Count No. 35 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 35 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 35 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 35 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made

was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 35 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 35 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 35 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

36.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 36 of the indictment in the above styled cause for the following reasons:

1. Count No. 36 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 36 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 36 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 36 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 36 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 36 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 36 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

37.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty

as to said William Lloyd Lewis upon Count No. 37 of the indictment in the above styled cause for the following reasons:

1. Count No. 37 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 37 of said indictment does not set out or sufficiently describe the entry in the minute book of the Liberty National Bank which is alleged to be false.

3. Count No. 37 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

4. It appears from the allegations of Count No. 37 of said indictment that the false entry therein charged to have been made was not an item of account, and that the book of the Liberty National Bank in which it is alleged to have been made was not a book of account, whereas "books" of the bank as used in the statute under which said count is laid means books of account, and "entry" as used in the statute with regard to books of the bank means an item of account; and that this construction of the statute has been settled and acquiesced in by the executive and judicial departments of the Government since the enactment of the statute, and the facts alleged in this count of said indictment does not constitute the making of a false entry in the books of the Liberty National Bank within the meaning of the statute.

5. Under Count No. 37 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 37 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 37 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed,

but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

38.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 38 of the indictment in the above styled cause for the following reasons:

1. Count No. 38 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 38 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 38 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4. Count No. 38 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 38 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 38 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 38 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

39.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 39 of the indictment in the above styled cause for the following reasons:

1. Count No. 39 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 39 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 39 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4 Count No. 39 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 39 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 39 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 39 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

40.

Defendant William Lloyd Lewis comes now and moves the court to direct the jury to return a verdict of not guilty as to said William Lloyd Lewis upon Count No. 40 of the indictment in the above styled cause for the following reasons:

1. Count No. 40 of said indictment is so indefinite and uncertain that it does not advise or sufficiently advise this defendant of the charge which he is to meet, or give him a fair opportunity to prepare his defense thereto, or enable him to avail himself of a conviction or acquittal in defense of another prosecution for the same offense, or enable the court to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

2. Count No. 40 of said indictment does not set out or sufficiently describe the entry in the report of the Liberty National Bank to the Comptroller of the Currency which is alleged to be false.

3. Count No. 40 of said indictment does not sufficiently describe the report of the Liberty National Bank to the Comptroller of the Currency in which the said alleged false entry is charged to have been made, and does not sufficiently allege that said report to the Comptroller of the Currency in which the alleged false entry is charged to have been made was a report of the Liberty National Bank of Tulsa, Oklahoma, or that it was made pursuant to the laws of the United States.

4. Count No. 40 of said indictment fails to state facts sufficient to constitute a public offense under the laws of the United States, or a crime against the United States.

5. Under Count No. 40 of said indictment there is no substantial evidence of facts which exclude every other hypothesis but that of guilt on the part of this defendant.

6. Under Count No. 40 of said indictment the evidence is more consistent with this defendant's innocence than with his guilt of the offense therein charged.

7. The evidence under Count No. 40 of said indictment is wholly insufficient to sustain a conviction of this defendant.

8. The indictment is illegal and void because returned by an illegal and unlawful grand jury, because it was not drawn from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as the same existed at the time the offense is alleged to have been committed, but was drawn from the territorial body of the United States District Court for the Eastern District of Oklahoma as the same now exists, without any order of court for the drawing of said grand jury panel from any particular part of the territorial body of the district as it existed at the time the offense is alleged to have been committed.

DAVIDSON & WILLIAMS,
J. B. CHAMPION,
Attorneys for Defendant.

(Indorsed upon said Motion for Directed Verdict appears:) Filed Jan. 25, 1926. W. V. McClure, Clerk U. S. District Court.

Be it remembered that thereupon, and on the same day, to-wit, the 25th day of January, 1926, the said motions of the defendant Allie E. Lewis and the defendant William Lloyd Lewis were duly presented, heard and overruled by the court as to each count of the indictment as to each defendant; to which rulings of the court the defendants and each of them at the time duly excepted.

Thereupon, Mr Davidson made opening statement to the jury on behalf of the defendants.

The Court: Let me ask counsel what time do you now think it will probably take to introduce the evidence?

Mr. Davidson: It will take, if your honor please, I take it will take all day tomorrow.

The Court: Then, we will not be able to complete the case tomorrow.

Mr. Davidson: No, sir. I think not. I don't think there is any chance to complete it tomorrow.

The Court: We can by Wednesday.

Mr. Williams: I think we can complete the introduction of all evidence tomorrow for both sides and the case be ready for argument the next day.

The Court: Very well. I think we will suspend at this time, then, until tomorrow morning, as it is 4:30 o'clock now. Gentlemen of the jury, we are about to take an adjournment of this court until 10:00 o'clock tomorrow morning. You may pass out until that time.

Thereupon, court took a recess until 10:00 a.m., Tuesday, January 26, 1926.

10:00 o'clock a.m., January 26, 1926, all parties being present, court reconvened and the following proceedings were had, to-wit:

The Court: You may proceed.

Mr. Davidson: If your honor please, before we proceed with the examination of the witnesses, I would like to get the record on the motion we filed to quash the petit jury panel. The court has never passed on that.

The Court: As I understand, you demurred to that motion or plea?

Mr. Dodds: Yes, if your honor please.

The Court: Found nothing in it except the fact.

Mr. Dodds: That is all.

The Court: I mean, as was stated here the other day.

Mr. Dodds: Yes.

The Court: Then I will sustain the demurrer and give you an exception.

Mr. Davidson: The defendants except to the court's ruling. May we have a separate order for the court to sign taking that action as of the day that the ——

The Court: If you will prepare the order, I will sign it.

Mr. Davidson: Mr. W. L. Lewis will take the stand, please.

W. L. LEWIS

was called as a witness on behalf of the defendants, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Davidson.

Q. Your name is W. L. Lewis? A. It is.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. How old are you, Mr. Lewis? A. Thirty-eight.

Q. Were you an officer of the Liberty National Bank at the time it sold out to the Security National?

A. Yes, sir, I was active vice-president.

Q. How long had you been active vice-president?

A. Perhaps four years; I don't know the exact date—possibly longer.

Q. What position did the defendant, A. E. Lewis, hold with the bank?

A. He was president of the Liberty National Bank during the entire existence of the Liberty National Bank.

Q. How long had you been connected with the Liberty National Bank?

A. During its existence, probably eleven years; possibly twelve.

Q. When was the Liberty National Bank organized?

A. I believe it was in 1912.

Q. It had been in existence as a state bank prior to that time?

A. Yes, sir, we organized the Tulsa State Bank in, I believe, 1911, and it existed as a state bank for a little less than a year, and then it was nationalized and the name changed to the Liberty National Bank.

Q. What positions did you hold with the bank at any time during the time you were connected with it, other than active vice-president?

A. I was formerly assistant cashier; then cashier, and then active vice-president.

Q. What banking experience had you had other than your connection with the Liberty National Bank?

A. I was in the Bartlesville State Bank, at Bartlesville, Oklahoma, for a year and a half or two years—had no official position, just did clerical work, teller and other clerical work.

Q. Was the defendant A. E. Lewis connected with the Bartlesville National Bank at the time you were there?

A. It was the Bartlesville State Bank.

Q. Bartlesville State Bank?

A. Yes, sir, he was president of the Bartlesville State Bank during that time.

Q. How long was he connected with the Bartlesville State Bank? A. Until he sold it, about two years and a half.

Q. Had he had any other experience besides his connection with the Liberty National Bank and the Liberty State Bank and the Bartlesville State Bank?

A. Yes, sir, he was formerly president of the Ramona State Bank prior to going to Bartlesville.

Q. Did you give your age? A. Yes, sir, thirty-eight.

Q. How old is A. E. Lewis? A. Forty-three.

Q. Where did you spend your boyhood days, Mr. Lewis?

A. I was on the farm near Stillwater twenty-one years.

Q. And from there you went to Bartlesville?

A. Yes, sir, after I finished school I went to Bartlesville.

Q. Now, Mr. Lewis, directing your attention to the affairs of the Liberty National Bank, I will ask you to state whether or not the Liberty National Bank sold its assets to the Security National Bank? A. It did.

Q. On what date? A. November 3rd or the 5th, of 1923.

Q. Was that sale in writing? A. Yes, sir.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 29, and ask you to examine it and state whether or not that is an original copy of execution of the contract of sale?

A. It is the original execution of the contract of sale executed by the Liberty National Bank by A. E. Lewis as president and attested by R. C. Lamprich as secretary and also by the Security National Bank by Asa E. Ramsey as president and L. H. Pratt, cashier, dated November 5, 1923.

Mr. Davidson: We offer in evidence, if your honor please, Defendant's Exhibit No. 29.

The Court: All right.

(Thereupon Mr. Davidson read Defendants' Exhibit No. 29 to the jury.)

Q. Mr. Lewis, I will ask you what indebtedness you and your brother owed—maximum indebtedness you owed, and when the maximum was reached in your individual indebtedness?

A. I have no records of that. Do you mean at the Liberty National Bank, or anybody?

Q. No, I mean your personal obligations.

A. I have no records of that, other than to the bank. I have the record here of what we owed to the Commerce Trust Company of Kansas City.

Q. How much was that?

A. That was in—it was along about the first part of 1922, was $590,000. At November, when this sale was made to the

Security National Bank it had been reduced to $190,000. And at the Exchange National Bank of Tulsa, in the early part of 1922, we owed them $100,000, and that had been paid in full. And the Mechanics & Metals National Bank of New Yory City, in 1922, in the early part, we owed them $50,000; that had been reduced to $21,000 at the time of the sale to the Security National Bank was made. At the Liberty Central Trust Company of St. Louis, in 1922, we owed them $100,000, and that had been reduced to $20,000 at the time the sale was made to the Security National Bank. Now, those figures are none of them, as I recall it, just right down to the dollar; that is an approximate in thousands.

Q. That indebtedness to these various banks was the indebtedness of you and your brother, A. E. Lewis, both?

A. That is correct.

Q. Now, in 1922, at the time that indebtedness existed, what lines of business were you and your brother engaged in?

A. We were in the banking business. We also had large interests in real estate, buying and selling real estate. We were in the oil business, both producing oil and buying and selling leases, and the drilling of leases. We also had considerable gasoline interests and some farming interests. And we owned suburban property near Tulsa and other places.

Q. What did you believe you properties were worth at that time? A. You refer to 1922, early part of 1922?

Q. Yes, sir.

A. We made up our statements of our assets and liabilities and it showed a net worth, as I recall, of his, for a little in excess of a million, and mine a little less than a million.

Q. Did you believe that was the real net worth of yourself and brother at that time?

A. Yes, sir, it was; that was what we considered, and that was actual value at that time.

Q. Now did you have any oil producing properties?

A. We did.

Q. Where were they located?

A. Well they were, the big production, the main production we had was located near Bristow, east of Bristow. We had some other oil interests but this was the principal interest.

Q. What was the name of that lease?

A. Called the McIntosh lease, and another one adjoining it called the Brady lease which had some production on it also.

Q. How much did the well on that McIntosh lease produce, when it came in?

A. During January, February, March and possibly April of 1922, the wells came in, when the first one came in, in December, 1921, and the other wells came along in January, Feb-

ruary and March, I don't remember the exact dates, but during the first three or possibly four months of 1922, it had a daily production of from five to seven thousand barrels.

Q. That one well?

A. No, sir, that was the entire lease. There were four wells on that lease. This one well came in larger than that, but as it went down, other wells were drilled in.

Q. What did the first well come in at?

A. I don't remember, I believe about 7,500 barrels.

Q. 7,500 barrels a day? A. I am not certain as to that.

Q. Now, I will ask you—kill that question. Were you and your brother engaged in drilling in other wells about that time? A. Yes, sir, had interest in wells that were drilling.

Q. At that time these oil properties were held in your name individually, were they or not?

A. The majority of them at that particular time, I believe were held in the name of A. E. Lewis, however, I had a one-half interest in them and had an assignment to them but on the records however I believe they showed to be in his name, the majority of them.

Q. Have you any record as to how much oil production you all had in 1922? A. I could give you that approximately.

Q. How much was it?

A. The production was approximately a half million dollars, I don't know in barrels, but the gross production in 1922, was approximately a half million dollars.

Q. Were any of these foreign creditors in 1922 demanding payment of their indebtedness against you, their claims against you?

A. Yes, sir, the bank at Kansas City and the bank at New York and the bank at Tulsa, that is, the Exchange National Bank, each of those banks asked that we make reductions on our notes to them.

Q. When did that begin? A. Well, along about 1922.

Q. Sometime in 1922? A. I believe that is right.

Q. Now, you knew John T. Kramer, did you not?

A. Yes, sir.

Q. How long had you known John Kramer?

A. Perhaps twelve or fourteen years.

Q. That is the John T. Kramer, who was a director in the Liberty National Bank and a stockholder in the Liberty National Bank? A. That is correct.

Q. How long had he been a stockholder in the Liberty National Bank?

A. I imagine about seven or eight years, I am not certain.

Q. At the time that he made this $30,000.00 note to the Liberty National Bank, did you know his financial condition?

A. Yes, sir.

Q. You were advised as to his properties?

A. Yes, sir, I knew where his farms were located; I knew of his livestock which he owned and he was exhibiting around at various state fairs and international stock shows at that time.

Q. What did you believe at that time was his net worth?

A. I would say in excess of $150,000.00, probably in excess of $200,000.00.

Q. I will ask you to tell the jury, Mr. Lewis, the circumstances under which that $30,000.00 note was made to the Liberty National Bank, and how it happened to be made?

A. My brother and myself wanted to borrow some money. We had a loan at the bank, I don't recall the exact amount, and we asked Mr. Kramer to borrow this money from him. Mr. Kramer didn't have that amount of cash on hand at that time, so we suggested to him that he borrow $30,000.00 from the Liberty National Bank and he loan this money to us, and this transaction was carried out in that manner. Mr. Kramer borrowed $30,000.00 from the Liberty National Bank and the Liberty National Bank discounted the note in the regular course of business, paid Mr. Kramer $30,000.00, which was deposited to his credit. Mr. Kramer then issued checks for the total amount of $30,000.00, being in three separate amounts payable to my order. For these three checks which he gave to me, and my brother, I believe however they were made payable to me; my brother and myself issued our promissory note in favor of John T. Kramer for $30,000.00. In other words he borrowed $30,000.00 from the Liberty National Bank, the Liberty National Bank paid him $30,000.00, then we borrowed $30,000.00 from him, for which he gave checks drawn on the Liberty National Bank and we gave him our promissory note for $30,000.00.

Q. At the time of that transaction, did you or your brother, A. E. Lewis, have any excess loans in the Liberty National Bank? A. We did not; and the records will so show.

Q. I will ask you, Mr. Lewis, if you had any intention in that transaction of defrauding or injuring the Liberty National Bank, or any other person or corporation.?

A. No, sir; no such intention whatever. The Liberty National Bank discounted a solvent note in the regular course of business, and we borrowed the proceeds later from Mr. Kramer, for which we issued him our note. It was a bona fide transaction in every respect, and the records of the bank show the entire transaction just at it occurred.

Q. Did you tell Mr. Kramer that you and your brother had excess loans in the Liberty National Bank, and that you wanted to borrow this money to take up those excess loans?

A. No, sir, no mention was made of that; the records show we had no excess loans in the bank.

Q. Directing your attention, now, to the transaction with McDonnell, Jim McDonnell, which involved the note of James McDonnell that has been offered in evidence in this case by the Government, when did that transaction have its inception?

A. I don't know the exact date; I believe it was in 1920 or 1921.

Q. Tell the court and jury——

A. It was not later than the early part of 1921. I believe it was prior to that time.

Q. I will ask you to tell the court and jury the circumstances under which that original note of James McDonnell was made.

A. The original note of James McDonnell was made for the purpose of buying stock in the Sinclair corporation, and the stock which was purchased—the note was executed to the bank and the proceeds credited to the account of James W. McDonnell and Mr. McDonnell issued a check—I don't know whether he signed the check or not, but at any rate it was as per his instructions that the check was issued, payable to the order of Houston Fible & Company, stock brokers at Tulsa, made payable to them, in payment for this stock in the Sinclair Company, and the entire amount of this stock in the Sinclair Company was placed as collateral to Mr. McDonnell's note in the Liberty National Bank, the stock was.

Q. Now, did Mr. McDonnell receive his canceled checks from the bank monthly?

A. He did; he signed a receipt for those that the bank requires each depositor to sign when they deliver the statements to them containing the canceled vouchers.

Q. He received back in due course of business his canceled check to Houston Fible & Company? A. Yes, sir.

Q. At the time of that transaction, did you believe that James McDonnell was solvent?

A. Yes, sir. And besides, the entire proceeds of the note was paid for stock and this stock, in addition to Mr. McDonnell's other assets, were to be behind the note. I don't mean by that there was other assets pledged as collateral to the note, but his worth, which would be connected to the note on account of his name there, which was to it, and in addition to that all which the money purchased was pledged as collateral to this note in the bank.

Q. Now, I will ask you to explain how that note increased from $12,500 to the amount of the note that was introduced in evidence here, $23,000 and something

A. At the same time that James W. McDonnell made this loan to the bank—I say at the same time, I believe it was the same day; it might have been a day or two difference, his brother, Hugh McDonnell entered into a similar transaction in which he borrowed money from the bank, the money was credited to his account and checked on, made payable to the brokerage concern for stock in the same amount that James W. McDonnell's was made, and this stock was also endorsed by—made to the order of Hugh McDonnell, and James W. McDonnell's stock was also made payable to his order, and each of them endorsed the stock and it was pledged as collateral to their notes. Later the two notes, the one of Hugh McDonnell and the one of James W. McDonnell, were merged into one note, and the stock pledged as collateral to the one note, and James McDonnell was the one who signed this latter note. That was the occasion for its being increased.

Q. And the Hugh McDonnell note was——

A. It was canceled and marked off the records of the bank, yes, sir, and the stock securing the Hugh McDonnell note was pledged to the James W. McDonnell note.

Q. Now, was the stock purchased by James McDonnell issued in James McDonnell's name? A. It was.

Q. Was it endorsed by him? A. It was.

Q. And placed up with the bank as collateral behind his note?

A. Yes, sir, and the same thing applies to the Hugh McDonnell transaction.

Q. The same thing applies to the Hugh McDonnell note?

A. That is correct.

Q. And the Hugh McDonnell note, with all of this stock—I mean the James McDonnell note of $23,000 and some odd, which has been offered as an exhibit in this case, with all of the stock, both of James McDonnell and the Hugh McDonnell stock behind it as collateral, passed from the Liberty National Bank to the Security under this sale? A. It did.

Q. Did you or A. E. Lewis, either one of you, receive any part of the money that was borrowed from the Liberty National Bank by James McDonnell or by Hugh McDonnell?

A. We did not; the entire amount of it was credited to his account and later paid for these stocks.

Q. Went to Houston Fible Company for the stock?

A. Yes, sir, and checks were made payable to their order and bore their endorsements. The checks have been presented as exhibits in previous trials here.

Q. Was any intention on your part, so far as you know anybody connected with the bank, to injure or defraud the bank in this transaction? A. None whatever.

Q. Or anybody else? A. No, sir, no such intent.

Q. Did you believe when this transaction took place that James McDonnell and Hugh McDonnell were solvent?

A. Yes, sir.

Q. And that the note was a gilt-edged, collectible note?

A. Yes, sir.

Q. Both of them?

A. Yes, sir, the same answer applies to both people.

Q. Now, directing your attention to the Ed Soph note, I will ask you to state when that transaction had its inception?

A. I don't—I haven't the records here on that. As I recall it, the original transaction was about—along in 1920.

Q. In 1920? A. I believe that was the year.

Q. What was the amount of the original transaction?

A. The original transaction, as I recall it, was $40,000.

Q. I will ask you to state to the jury the facts and circumstances of that transaction.

A. We asked Ed Soph to execute a note, I believe it was two notes, for twenty-five and fifteen thousand dollars, respectively. The $25,000 note was executed to the bank and the other note, as I recall it, was executed to either A. E. Lewis or myself, and we discounted it with some other bank. In payment for these notes, we gave Mr. Soph our note in a lump sum for $40,000, executed by A. E. Lewis and myself. At the time the note was executed to the bank, the amount of it was credited to Mr. Soph's account, and Mr. Soph gave either A. E. or myself, or both, a check for this amount, for which we gave him this note in the amount of $40,000.

Q. And the note of $33,000.00 of Ed Soph that has been introduced in evidence in this case as Government's Exhibit, was the outgrowth of that original transaction?

A. Yes, sir. We later paid $7,000.00 to Mr. Soph and Mr. Soph as I recall it, took credit, I don't remember the exact date this $7,000.00 was paid to him, but Mr. Soph, as I recall it, took credit for this $7,000.00 and then he gave a check on his account to the bank which reduced his indebtedness to the bank $7,000.00, and he also, or myself, placed the credit on the note, anyway, he produced the note which we had given him for $40,000.00, and made an offset to that for $7,000.00.

Q. In other words, as I understand the transaction, you paid $7,000.00, you or A. E. Lewis one paid $7,000.00 to Ed Soph, which went to his individual account at the Liberty National Bank? A. That is correct.

Q. And that was credited on the indebtedness of Ed Soph to the bank? A. That is correct.

Q. Reducing the amount from $40,000.00 to $33,000.00?

A. Yes, sir, or if the amount wasn't $40,000.00 at the

bank, reducing it by $7,000.00; and I also want to qualify that, Mr. Soph had an account there as Ed Soph and another as Ed Soph Company. At any rate, the Ed Soph Company was owned and controlled entirely by Mr. Soph.

Q. And this $7,000.00 was also credited on the note that you and your brother had given Ed Soph for $40,000.00?

A. Yes, sir, after we paid him this money and he put it in the bank the credit was also given on the note which we had given to him. This was the note introduced here in evidence for $40,000.00.

Q. How long had you known Ed Soph at that time?

A. Probably seven or eight years.

Q. Were you acquainted with his financial condition?

A. Yes, sir.

Q. At the time of that transaction, did you believe him to be solvent?

A. Yes, sir, I knew him to be solvent. I knew where his properties were located and knew the value of it.

Q. What did you believe was his net worth at that time?

A. His net worth at that time was at least $50,000.00. I don't know the exact amount of it. I knew where Mr. Soph's property was, knew the value of it, because I had gone out and recommended he buy the property before that time and loaned him the money to buy the property with. It was suburban property out near Tulsa.

Q. Mr. Soph was rather a large dealer in suburban properties?

A. He had one good suburban property. It was all in one block, his interest was rather large.

Q. Did you believe when that Soph indebetdness, Soph loan was made by the Liberty National Bank it was solvent note?

A. Yes, sir, I knew it to be a solvent note, discounted by the Liberty National Bank in the regular course of business.

Q. Did you or anybody else connected with the Liberty National Bank have any intention in that transaction of defrauding or injuring the Liberty National Bank or anybody else? A. No, such intention.

Q. Now, directing your attention to the William O. Bohnefeld transaction, I will ask you to tell the court and jury the circumstances under which that took place.

A. We asked Mr. Bohnefeld to borrow from the bank $10,000.00 and asked that he loan this amount of money to A. E. and myself, and that we would give him our personal note for this amount. That was carried out in that manner. Mr. Bohnefeld borrowed from the Liberty National Bank $10,000.00, the Liberty National Bank discounted his note in

the usual course of business and credited this amount to Mr. Bohnefeld's account, and we received the proceeds of the checks of Mr. Bohnefeld, and for the checks we gave him our note for $10,000.00, executed by A. E. and myself. At the time this note was executed, we told him, and also told Mr. Kramer and Mr. Soph the same thing applies to those, at any time they became dissatisfied with this arrangement or wanted this arrangement to cease, if they would bring the note back which my brother and myself were giving them, we would pay this note, and they in turn could pay their note to the Liberty National Bank.

Q. Now, the proceeds of this $10,000.00 Bohnefeld note went to Bohnefeld's credit or to the credit of Bohnefeld's Cleaning Works?

A. It went to the credit of Bohnefeld's Cleaning Works. That Bohnefeld's Cleaning Works was the style of Mr. Bohnefeld's name in which he carried his business account.

Q. It was just a trade name? A. Yes, sir, that is correct.

Q. It was William O. Bohnefeld in fact?

A. Yes, sir, he owned the whole thing and he checked on this Bohnefeld's Cleaning Works both for the cleaning works and his personal account.

Q. And he carried that account in the Liberty National Bank? A. He did.

Q. Now, you heard Mr. Bohnefeld testify in this case, did you not? A. Yes, sir.

Q. I will ask you to state whether or not in that conversation you told him that this money was being borrowed for the benefit of the Liberty National Bank?

A. No, sir; on the contrary we told him we needed it personally, and we gave him our personal note for same.

Q. Who was present at that conversation?

A. A. E. Lewis was present during part of the time. I believe he wasn't there during the entire portion of the conversation, and I don't recall that he entered into the conversation. If at all it was very little.

Q. Mr. Lewis, at this point, I want to ask you this. How much of the time did you spend in the Liberty National Bank during business hours?

A. I was there from about eight to eight fifteen in the morning and about five of evenings almost every day. Was out of town occasionally but not often.

Q. How much of the time did your brother A. E. Lewis spend in the bank?

A. He didn't get down as early in the morning, but he was there practically every day. It would be from ten o'clock on until evening. I don't mean by that each one of us would

get down at exactly the same hour each day, but that time was approximately correct.

Q. In other words, you devoted practically all of your time to the affairs of the bank there?

A. Yes, sir, I was in the bank.

Q. And you transacted your private business there, did you not?

A. Yes, sir, my private business was transacted while I was in the bank, the majority of it. I would go out to look at various properties at times.

Q. What manner did you handle your different lines of business?

A. Our farming business interests were carried in the name of the Mingo Company, a corporation, which A. E. Lewis and myself owned entirely, and our gasoline interests, the majority of that was carried in the Ray Gasoline Company also a corporation owned by A. E. Lewis and myself entirely and our suburban property was carried in the name of the Sanders Company also owned entirely by A. E. and myself, and our oil interests, the majority of that were carried in the name of the Lincoln Company, a corporation, owned by A. E. and myself. Now, these four corporations which I have just mentioned, my brother and myself owned the entire corporation. However, there was one or possibly two shares of stock, I don't remember which, issued to R. C. Lamprich as a dummy in there, so as to make three directors for a corporation as it is necessary to have three directors for a corporation in the state of Oklahoma.

Q. Now, what was the purpose in the incorporation of The Lincoln Company, the Mingo Company and the Sanders Company and the Ray Gasoline Company?

A. It was for our personal convenience in handling our own interests. We handled the farming interests in one company and the oil interests in another. We kept our personal interests separate in that manner as a matter of convenience for ourselves.

Q. Directing your attention to the Lincoln Company note of $20,000.00 which has been introduced in evidence, here, I will ask you to state the circumstances under which this note was made to the Liberty National Bank, and what became of the proceeds of it.

A. The Lincoln Company note in amount of $20,000.00 was executed August 27, 1923, the proceeds of that note was deposited to the Lincoln Company's account, and they later gave a check payable to A. E. Lewis in the amount of $18,000.00, that was on August 27, 1923, and another check on September 4, 1923. The Lincoln Company had purchased oil

properties from A. E. Lewis personally for about the value of about $40,000.00 or $45,000.00, and given him a note for this amount. When they borrowed this money from the bank this amount of money was credited on the Lincoln Company note to A. E. Lewis.

Q. Now——

A. The Lincoln Company also gave a mortgage to the Liberty National Bank secured by this property.

Q. Now, these oil properties for which the $20,000.00 was paid to A. E. Lewis, were actually transferred and assigned by him to the Lincoln Company, were they at that time?

A. That is correct.

Q. And those properties were of the value of approximately $45,000.00? A. Yes, sir.

Q. Now, directing your attention to the Mingo Company note of $33,000—kill that question just a moment. I will ask you if there was any intention on the part of yourself or anyone else, that you know of, in that Lincoln Company transaction, to defraud or injure the Liberty National Bank or anybody else?

A. No, sir; no such intention. The Liberty National Bank discounted a solvent note in the regular course of business and they gave credit for this note to the Lincoln Company.

Q. That was a solvent note, was it not?

A. Yes, sir, it was.

Q. You believed it to be such?

A. Yes, sir. That was the actual market value of the properties at that time. It could have been sold for that on the market by anybody that would be on the market for leases.

Q. Now, directing your attention to the Mingo Company note of $33,000, tell the court and jury the circumstances under which that was made.

A. The Mingo Company note of $33,000, dated December 20, 1922, was executed by the Mingo Company, by R. C. Lamprich, as secretary and treasurer—Lamprich was also secretary and treasurer of the Lincoln Company and he executed the Lincoln Company note—the proceeds of this $33,000 Mingo Company note was credited to the account of the Mingo Company and two checks for—no, one check for $33,000 was drawn against this by Mr. Lamprich, as secretary treasurer and deposited to the account of A. E. Lewis. A. E. Lewis then gave his personal check for $33,000, drawn on the Liberty National Bank, and made payable to the Liberty National Bank, for which he paid his two notes, note No. 14047, for $5,000, and note No. 13,095, for $28,000, making a total of $33,000. These notes he had prior to that time borrowed from the Liberty National Bank and owed them at the Liberty National Bank, and this Mingo Company note paid these two notes.

Q. Now, in this Mingo note transaction, there was no money left the Liberty National Bank, was there? A. No, sir.

Q. All the proceeds of the Mingo Company note went back right into the bank and never went out of the bank, as a matter of fact, and was applied to the payment of the two notes of A. E. Lewis? A. That is correct.

Q. Which had been previously made to the bank by A. E. Lewis?

A. Yes, sir. It was equivalent to a renewal note in that amount, and A. E. Lewis gave the Mingo Company a note for $33,000 on that date.

Q. For $33,000? A. Yes, sir.

Mr. Davidson: Let me have that Mingo Company note for $33,000, Mr. Genau.

Q. I had you Government's Exhibit No. 30, Mr. Lewis, and ask you to examine it and state whether or not that is the original note of the Mingo Company, or is that a renewal of the original note?

A. This is—the exhibit which you hand me is a renewal. The original note was executed December 20, 1922, and this renewal note was executed May 24, 1923, being No. 20,077, for the same amount. This note was paid to the bank as a renewal of the other note for a like amount.

Q. There was no money left the Liberty National Bank on the execution of this note, which is Government's Exhibit No. 30, was there? A. No, sir, this was merely a renewal note.

Q. I will ask you if there was any intention on your part or anyone else's, connected with the bank, that you know of, to injure or defraud the Liberty National Bank in the Mingo transaction?

A. None whatever. The Liberty National Bank discounted a solvent note, in the regular course of business, of the Mingo Company, executed by the official of the Mingo Company, and the proceeds were credited to the Mingo Company's account and used by the Mingo Company.

Q. And what property of the Mingo Company—what was the value of the Mingo Company's property at that time?

A. Approximately $60,000.

Q. Did it have any other indebtedness, other than this $33,000 note? A. No, sir, this was their only indebtedness.

Q. Of what did the Mingo Company's property consist?

A. Principally in a farm on the paved road near Tulsa, about seven miles from Tulsa, and this farm was 160 acres. It was exceptionally well improved and then on this farm was a large amount of farm implements, and there was also quite a bunch of livestock on there, consisting of horses and cattle.

Q. At the time that the original transaction took place

with the Mingo Company, when the Mingo Company made this note to the bank for $33,000, did you believe that note was solvent and collectible?

A. Yes, sir, I knew it to be solvent and collectible.

Q. And it was?

A. On account of the assets which the corporation owned, and on account of their owing nothing else except this amount which they just then obligated themselves for.

Q. Now, directing your attention to the M. A. Houser note transaction, I will ask you to tell the court the facts and circumstances under which that note was made.

A. The M. A. Houser note was discounted by the Liberty National Bank June 27, 1923, being No. 20,284. The proceeds of this note were deposited to the account of Dr. M. A. Houser—I believe the account was on the book Mr. or Mrs. M. A. Houser—for $10,000, and the proceeds then by check given to me for the total amount of $10,000. For this note, my brother and myself—for the proceeds of this note, which were the proceeds of these checks, my brother and myself executed a note to Dr. M. A. Houser for $10,000. We told Dr. M. A. Houser at that time that any time that he cared to—for this transaction to cease, that if he would bring the note which my brother and myself was giving him into the bank, that we would pay it and he in turn could pay his note to the Liberty National Bank.

Q. You were acquainted, were you, with the financial condition of Dr. Houser at that time? A. I was.

Q. Did you believe it was solvent?

A. Yes, sir, I knew it to be solvent.

Q. You believed this note of Dr. Houser's which the Liberty National Bank took, was a solvent, gilt-edged note?

A. Yes, sir, we had Dr. Houser's statement on file at that time and had had for some time, for money which he had borrowed prior to that time, which showed his detailed statement of his holdings, giving his net worth, together with his assets and liabilities.

Q. How much did that statement show his net worth?

A. I don't recall, but I believe it was about $70,000.

Q. You were acquainted with the business that Dr. Houser was engaged in, were you?

A. Yes, sir, Dr. Houser was a surgeon and is yet in the City of Tulsa, and does a very large business.

Q. I will ask you if he was not then and is not now the leading surgeon in the City of Tulsa?

A. That statement is correct.

Q. He carried his account with the Liberty National Bank? A. Yes, sir.

Q. His checking account?

A. Yes, sir, Dr. Houser owned, as shown by his statement, oil properties and leases, besides real estate, and he owned a farm in Iowa, I believe it was —I am not certain; at least the farm was not located in Oklahoma.

Q. I will ask you if you had any intention, or anybody else connected with the Liberty National Bank in that transaction, had any intention of injuring or defrauding the Liberty National Bank in making that loan?

A. None whatever. The Liberty National Bank discounted a solvent note; discounted it in the regular course of business and the proceeds of the note was credited to Dr. Houser's account, subject to his order.

Q. I will ask you now to explain to the court and jury the Dr. Hayden transaction, in which he borrowed $5,000 from the Liberty National Bank.

A. Dr. Hayden borrowed $5,000 from the Liberty National Bank June 14, 1923, being note No. 20,217, the proceeds of this note credited to Dr. Houser's account in the Liberty National Bank.

Q. Whose account?

A. I beg your pardon; to Dr. Hayden's account in the Liberty National Bank, on the same date, and the three checks were drawn on this account in the amount of $3,000, $1700 and $300, respectively. A. E. and myself received the proceeds of these three checks, for which we gave Dr. Houser our note.

Q. You mean Dr. Hayden?

A. Dr. Hayden, I beg your pardon. I keep getting it wrong. Dr. Hayden our note for $5,000. At the time we gave Dr. Hayden this note for $5,000, we told him at any time he desired this relationship to cease, if he would bring this note which my brother and myself were giving him back to us we would pay it and he in turn could pay his note to the Liberty National Bank.

Q. I hand you a note which is marked for identification "Defendants' Exhibit No. 30," and ask you to examine it and state whether or not that is the note that you and your brother gave Dr. Hayden at that time?

A. Yes, sir, that is the note we gave him for the proceeds of the three checks totaling $5,000.

Mr. Davidson: We offer in evidence, if your honor please, this note.

The Court: All right.

Mr. Dodds: No objection.

Mr. Davidson: Note of W. L. Lewis and A. E. Lewis to Dr. Hayden, for $5,000, dated June 14, 1923.

Q. Mr. Lewis, you heard Dr. Hayden's testimony in this case? A. Yes, sir.

Q. Did you tell him in that conversation—you or your brother, either one, A. E. Lewis, that you would give him a note by A. E. Lewis and W. L. Lewis as president and vice-president of the Liberty National Bank?

A. No, sir, I don't believe Dr. Hayden testified to that, either, Mr. Davidson.

Q. If he did, you did not make that statement to him?

A. No, sir, that statement is not correct. We told him we would give him our personal note; that we needed these funds for our personal use, and that was what was done. We gave him our personal note, the one which you just exhibited.

Q. I will ask you to state whether or not you said to Dr. Hayden in that conversation that the bank was short on funds and that the bank had an option that it desired to exercise, and that you wanted to borrow this money for the bank?

A. No, sir; no, sir.

Q. To enable the bank to exercise its option on some oil property?

A. No, sir; no such statement was made as that. On the contrary, we told him, for personal uses we wanted this for, and we executed our personal note to him in payment for it.

Q. Did you at any time say to Dr. Hayden that this money was wanted for the use of the Liberty National Bank?

A. No, sir, no such statement was made as that.

Q. Or that you wanted him to execute this note of $5,000 to the Liberty National Bank for its use?

A. No, sir, no such statement was made as that; it was not the intent, and nothing was said about that.

Q. Now, I will ask you Mr. Lewis, if you had any intention or anyone connected with the Liberty National Bank that you knew of had any intention of defrauding or injuring the Liberty National Bank in this particular Hayden transaction?

A. No, sir, no such intent.

Q. Did you know the financial condition of Dr. Hayden at that time?

A. Yes, sir, we had his financial statement on file at that time and had had for some time. Dr. Hayden was a borrower from the bank and had been for some time, and we had his financial statement on file and had had for some time.

Q. I will ask you what you believed was his net worth at the time that $5,000 note was made to the bank?

A. His financial statement showed his net worth between seventy and seventy-five thousand dollars— I don't recall the

exact amount, but those figures are approximately correct; approximately $75,000.

Q. Did you believe he had a net worth in that amount?

A. Yes, sir, I knew where practically all of his property was located; in fact I had loaned him money at various times to buy the majority of his property.

Q. He likewise was a doctor and enjoyed a large practice?

A. Yes, sir, practicing physician in the City of Tulsa and is yet.

Q. I will ask you, Mr. Lewis, to tell the court and jury, the facts and circumstances under which the Simon W. Knoten note was made?

A. I believe that they introduced two notes in evidence, one for $15,000 and one for $17,000.

Q. Take the first note, explain that.

A. December 16, 1922. Simon Knoten purchased from my brother A. E. Lewis, 75 shares of Liberty National Bank stock. He didn't have the money to pay for this, so he borrowed from the bank $15,000, executed his note payable to the bank for $15,000.00, for which the bank gave him credit. Mr. Knoten gave a check which has been introduced here in evidence for $15,000.00, payable to A. E. Lewis in payment of this bank stock. On that day the Liberty National Bank issued to Mr. Knoten the seventy-five shares of bank stock and that I believe completes that transaction.

Q. All right now, at that time did you know the financial condition of Simon W. Knoten?

A. I did. We had his financial statement on file and had had it for some time as Mr Knoten had borrowed various amounts from the bank from time to time. I also knew where his property was located, in fact, I had loaned him money to buy practically all of the property he had at various times on which he built buildings as it increased in value.

Q. Were you present at the time this original Simon W. Knoten note was made? A. I was.

Q. Who else?

A. A. E. Lewis. In fact the check was made payable to A. E. Lewis.

Q. Do you believe at that time that the Simon W. Knoten note was solvent and collectible?

A. Yes, sir, I knew it was by the assets he had.

Q. What did you believe at that time to be his net worth?

A. $65,000.00 to $70,000.00.

Q. And you had his financial statement on file showing that? A. That is correct.

Q. Were you present when that note was renewed and the $17,500.00 note was made? A. I was.

Q. What happened at that time?

A. That was June 8, 1923. Mr. Knoten executed another note in the amount of $17,500.00 dated June 8, 1923, being note No. 20,190. He received in payment for that his old note of $15,000.00 which the bank cancelled at that time and returned to him; he also received in payment for that a cashier's check for the balance of $2,500.00 made payable to Simon W. Knoten. Mr. Knoten endorsed that check and turned it back to A. E. Lewis, for which he received A. E. Lewis' promissory note for $2,500.00, made payable to the order of Simon Knoten. That check and note has been introduced in evidence.

Q. I will ask you if you or anyone else connected with that transaction had any intention either in the original transaction or in the subsequent renewal of the original note of injuring or defrauding the Liberty National Bank?

A. No, sir, no such intention. The Liberty National Bank discounted a solvent note in regular course of business and gave the maker of the note credit for the amount of the original note and in the latter instance they cancelled his note and gave him a cashier's check for the balance made payable to his order.

Q. Now, directing your attention to the C. F. Powell note, I will ask you if you were present when that transaction was had? A. I was.

Q. I will ask you to explain how that transaction occurred and what was done?

A. Mr. Powell came into the bank in May of 1923, one morning and said, "Allie, I am already to fix up the note." It appeared from that that he and Allie had had a previous conversation regarding it. I learned later it had taken place at A. E.'s home. Mr. Powell testified to that effect. So A. E. fixed up the note for $25,000.00, and before this was fixed up, he asked Mr. Powell however, if he could loan this from his personal funds. Mr. Powell told him he didn't have quite sufficient funds to loan it from. He had there in the bank at that time, I believe, he said, twelve or fifteen thousand dollars.

Q. That is, Powell had that to his individual credit at that time?

A. Yes, sir, in the Liberty National Bank. He also said he had money deposited in New York but didn't have sufficient funds to loan it at that time, so he executed a note to the Liberty National Bank for $25,000.00, for which the Liberty National Bank issued to him a draft payable to the order of C. P. Powell, drawn on the Mechanics & Metals National Bank at New York City for $24,495.00, the difference of $505.00 was retained by the Liberty National Bank for interest and revenue stamps on this note. The draft was mailed by Mr. Powell

at that time to his secretary in New York City with a letter of instructions asking that the draft be credited to his account, and that when this credit had been made that he notify Mr. Powell at the Ketchum Hotel in Tulsa. Mr. Powell instructed in this letter that it be deposited to his credit in the Empire Trust Company of New York City. At the same time Mr. Powell executed two checks, one for $20,000.00 and one for $4,495.00, payable to the order of A. E. Lewis. In payment for these two checks, my brother gave him and I also executed a note, a note for $25,000.00. We told Mr. Powell that at any time he desired if he would bring this note which we were giving him into the bank, we would pay it, and he in turn could pay his note to the Liberty National Bank. These two checks which he gave my brother in the amount of $20,000.00 and $4,495.00 respectively were credited to my brother's account in the Liberty National Bank, not on the same date, but on two separate dates, I don't recall the exact dates, were credited to his account in the Liberty National Bank and mailed out by the Liberty National Bank in their remittance in the usual manner to the bank on which they were drawn, the Empire Trust Company of New York City. The draft which the Liberty National Bank issued to Mr. Powell came back at the end of the month in the usual course of business with the other canceled vouchers which the bank had drawn and it showed to be deposited to Mr. Powell's credit in the Empire Trust Company, just like he had instructed in the letter which he had wrote at the time the transaction was executed.

Q. How long had you and Allie Lewis known Mr. Powell at that time?

A. Probably twenty-five years. When I was on the farm at Stillwater, Mr. Powell was running a drug store in Stillwater.

Q. Had you kept in touch with him and followed his career?

A. Yes, sir, we had know him and kept up the acquaintance during the entire time.

Q. You knew what business he was engaged in?

A. Yes, sir.

Q. I will ask you if you knew anything about his financial condition at that time? A. Yes, sir.

Q. Was anything said in that conversation about his financial statement?

A. Yes, sir, Mr. Powell said he would have a financial statement prepared as taken from his books in his office at New York City. I might say Mr. Powell was located in New York City a portion of the time and in Tulsa a portion of the

time. He would have his secretary at New York City make up a statement taken from the books and forward this financial statement to the bank. At that time, however, he gave a letter to the bank stating that he was worth in excess of $150,000.00 and that he would have this statement mailed to us. The statement didn't come along at that particular time. That was in May. Along in July the statement had not been received and so I wrote Mr. Powell a letter calling his attention to the fact that when he executed the note he agreed to have a statement filled out, and reminded him of the fact, and asked him if he would not have it sent in. Mr. Powell immediately wrote a letter stating he had overlooked it, and was sorry and hoped it didn't cause the bank an inconvenience, and was herewith enclosing the statement. The statement was the one that has been introduced in evidence showing his net worth in detail.

Q. I will ask you if Defendants' Exhibit 25 is the letter you refer to and in which the financial statement was enclosed?

A. Yes, sir, this letter is dated July 14th, and the note was executed in May. He hadn't sent it in, so we wrote to him reminding him of that fact.

Q. Is that letter in the same condition now it was when received?

A. Yes, sir, except the court reporters have put their stamps on it at the different trials.

Q. I will ask you if you believed at the time the bank loaned the $25,000.00 to C. F. Powell he was solvent and the note was collectible?

A. Yes, sir, we knew that from our personal relations with Mr. Powell, and also from the financial statement, the detailed report which he filed with us.

Q. I will ask you whether or not you or anyone else connected with that transaction had any intention of injuring or defrauding the Liberty National Bank thereby?

A. No, sir, no such intention. The Liberty National Bank discounted the note in the usual course of business and gave Mr. Powell a New York draft for the entire amount made payable to his order.

Q. Now, Mr. Lewis, there has been introduced here in evidence by the Government, the individual notes of A. E. Lewis and the individual notes of yourself. There is one note dated July 16, 1923, for $34,000.00, which is Government's Exhibit No. 34. I will ask you to examine that note and state whether or not that is an original note, or is that a renewal?

A. I couldn't tell without seeing the records. My recollection is that it was a renewal note. I couldn't be positive without seeing the blotter as of that date, July 16, 1923.

Q. I hand you Government's Exhibit 33, and ask you to examine that and state whether or not that was an original note or was it a renewal?

A. The same thing applies to this note. I couldn't tell without seeing the blotter. My recollection, however, is that both of them were renewal notes.

Q. I will ask you to state whether or not at the time the original note was made on which the money was obtained from the Liberty National Bank, if at that time you believed you were solvent and would be able to meet the obligation when it fell due? A. Yes, sir.

Q. Did you have any intention of injuring or defrauding the Liberty National Bank in those transactions?

A. No, sir, no such intention. A. E. Lewis was solvent at the time his notes were executed too.

Q. I ask you to examine Government's Exhibit 31, which is a note of A. E. Lewis to the bank for $34,000.00, and Government's Exhibit 32, which is a note of A. E. Lewis to the bank for $1,000.00, dated September 15, 1923, and state whether or not at the time those notes were made or at the time the original transaction took place and the money left the bank, you believed A. E. Lewis was solvent and would be able to meet his obligations when they fell due?

A. Yes, sir. I believed him solvent at that time.

Q. Did you have any intention at that time, or anyone else of injuring or defrauding the Liberty National Bank in that transaction?

A. I had no such intention, and I don't think anyone else had any such intention.

Q. Now, Mr. Lewis, I will ask you to please state to the jury the facts and circumstances under which the Mason Kitless note of $15,000.00 was made?

A. Mr. Mitchell and myself had a real estate transaction in 1923. In the part that particularly applies to this note, I sold Mr. Mitchell a residence in which I was living at that time, and received three notes in the total amount of $31,000.00. I also received another note in the amount of about $1,500.00, $1,400.00 or $1,500.00, which was to pay some more mechanics liens and also some insurance on the house. These notes were issued to me, and I discounted them at the Liberty National Bank. As the notes would fall due from time to time they would be renewed part of the time by the payment if interest, part of the time by execution of new notes. In this renewal process they finally resolved themselves into two notes, one of $13,000.00 and one for $20,000.00, the increase having been caused by the interest having been added from time to time. Mr. Mitchell was a lease broker, and was not able to pay

these loans; he was making every effort he could to pay them, but wasn't able to raise the money. The bank kept insisting on his making or paying the notes in full or at least making payments on them and Mitchell was unable to do so. He said he would go to Pawnee and did go to Pawnee to see his brother-in-law to see if his brother-in-law would not take one of these notes and pay it and carry it at the bank at Pawnee, his brother-in-law being connected with one of the banks at Pawnee. He made this trip to Pawnee and came back and said his brother-in-law said they were too high on loans themselves and couldn't carry it. We kept insisting on his making payments on these loans and he finally came in with Mason Kittess and said Mason Kittess would pay one of those notes and said he was financially responsible and able to take care of it. I had never seen Mr. Kittess up to that time that I recall; so Mr. Kittess told me, I asked him what he was worth, and he told me he was worth in excess of $100,000.00. It was in oil properties and some real estate in Kansas City, so we asked him to fill out a financial statement and he gave me the information which I jotted down on this financial statement which has been introduced here in evidence in lead pencil and the stenographer then wrote this information which Mr. Kittess had given me on this financial statement, in the form which it is right now and this financial statement was signed by Mason Kittess in my presence and in the presence of A. R. Mitchell in the form in which it is right now, for $15,000.00—I mean as security, supporting rather, his note for $15,000.00. He also executed to the bank a note for $15,000.00. In payment for this note to the bank, the Liberty National Bank issued a cashier's check for $15,000.00 payable to the order of A. R. Mitchell, the bank then marked from the records of the bank the following day the $13,500.00 note executed by A. R. Mitchell. This Mitchell note being marked from the bank was held by the bank as collateral. In other words, the Kittess note paid the Mitchell note, but the Mitchell note was still held as collateral merely being marked from the records and the mortgage securing this Mitchell note was not released, it remained in its present form, except it was held as collateral in place as an asset, the difference between this $15,000.00 and the $13,500.00 being $1,500.00, was paid to Mr. Mitchell, and he in turn paid it to me for this little note which I mentioned awhile ago in the amount of about $1,500.00. I don't remember the exact amount but this small note I have just mentioned of about $1,500.00 was never discounted by me in the bank. It was held by me personally. At any rate, it was not and never had been the property of the Liberty National Bank.

Q. Now——

A. The Liberty National Bank parted with $1,400 on that date.

Q. Now, how did it happen that that cashier's check for $1,500 was not endorsed by Mr. Mitchell until the following day, if that is a fact?

A. The cashier's check was for $15,000, in place of $1,500.

Q. $15,000.

A. That was an oversight on both Mr. Mitchell's part and my part that it was not endorsed. We were making up the statement and was waiting for Mr.—the stenographer to write it, and Mr. Kittess to sign the statement, and we were talking and the cashier's check was there, issued to his order, and I neglected to have him endorse it.

Q. The cashier's check was there at that time?

A. Yes, sir, it was executed by the bank on that date and was there at any time. I immediately sent one of the boys of the bank out——

Q. When did you first discover it had not been endorsed?

A. Just a few minutes after he left the bank, when I handed the cashier's check back to which ever teller handled the proposition, and he brought it back and said Mitchell had not endorsed this cashier's check, and I immediately sent one of the boys out out to find Mr. Mitchell to endorse this cashier's check. They went out to look for him, and the first place they looked was the Hotel Tulsa, and they found someone—anyway, they left word with someone that they were looking for Mr. Mitchell. They did not find him that evening. They went back the next morning and found him at the Hotel Tulsa, or someone told him they had been looking for him the morning before and he came down to the bank and endorsed this cashier's check and that was the way the transaction was handled.

Q. Now, Mr. Lewis, had Mason Kittess been in the bank with Mr. Mitchell, either the day before or two days before the day on which this note was executed?

A. I never saw Mr. Kittess before this note was executed, in my life, to the best of my recollection. He was introduced to me at the time this note was executed.

Q. That is the first time you had ever seen him?

A. That is the first time I ever remember of having seen him.

Q. Now, I will ask you if that Mason Kittess note was put up with the bank there as collateral security for the A. R. Mitchell note?

A. No, sir, it was not; that was not the intention that it should be. It was not the intention of Mr. Mitchell, and that

was not the intention of Mr. Kittess. Mr. Mitchell knew that was not the intention, and the cashier's check was drawn for the proceeds of this note and Mr. Mitchell endorsed the cashier's check, and nothing was said about it being put up as collateral, whatever.

Q. Had Mr. Mitchell been advised by the bank, previously, that the bank examiner was criticising his note?

A. Yes, sir, his notes were past due and had been carried along for some time and he had not been able to reduce the notes, not through any fault of his—he just naturally hasn't had the money to do it with. He was making every effort he could.

Q. And had you been after him for payment of the note?

A. Yes, sir, almost continuously for the last, probably, six or eight months, we had been insisting on his paying those notes, either in part or in full.

Q. When these original notes were made by Mitchell back in—— A. 1921 was the original transaction.

Q. 1921, was any security taken at that time for the payment of those notes?

A. Yes, sir, there was a mortgage taken on the house which I sold him.

Q. What disposition was eventually made of that mortgage?

A. The property was—after that time—deeded by Mr. Mitchell back to me, and I at that very time executed a deed to the Liberty National Bank. These deeds were not placed on record at that particular time. They were held just a short time, as there was a deal pending with W. A. Brownlee, of the Exchange National Bank, whereby he was on a deal to buy this property, and the deal went through and he bought the property and paid part cash and turned in part real estate, which, the real estate—the cash was turned direct to the Liberty National Bank and the real estate was also turned to the Liberty National Bank and carried on the assets of the bank as real estate owned, and that took up the $20,000 note of A. B. Mitchell, which had been increased then by the addition of interest to $22,000. It was carried then on the books as $22,000. The values of this property also was not as high then as it was some three years before, when it—or two and a half years before, whatever time it might have been, when it had been sold. It was sold right on the peak of real estate and at this particular time was when there was a slump in the price of real estate.

Q. Now, I will ask you Mr. Lewis, if you believed, at the time this Mason Kittess note was discounted by the bank that he was solvent and the note was collectible?

A. Yes, sir, I believed it was, from what Mr. Mitchell told me, and what he told me and from the assets which he listed. Now he listed assets in the net worth, as I recall it, of about 60 or 64 thousand dollars. I am not positive of the exact amount; anyhow, it was in excess of $60,000 which he listed. and this note, in discounting this note the bank retained the Mitchell note as collateral to the Kittess note.

Q. Was there any intention on your part or anybody else's part, connected with the bank there in that transaction, to injure or defraud the Liberty National Bank or anybody else? A. No, sir, no such intent whatever.

Q. From what source did you get the information as to the description of the different properties that Mr. Kittess owned that went into that financial statement?

A. Mr. Kittess gave it to me himself; Mr. Mitchell was sitting there at the desk at the time.

Q. Where did you get the valuations that were placed in that financial statement?

A. The same answer applies; Mr. Kittess gave me all that information.

Q. Now, that financial statement was filled out in the shape that it is in now, introduced in evidence here, at the time that Mr. Kittess signed it, was it? A. Yes, sir.

Q. Now, you heard the testimony of Mr. Mills, about his witnessing that signature of Mason Kittess? A. Yes, sir.

Q. Do you have any recollection about that? Or what happened?

A. No, sir, I have no independent recollection of Mr. Mills witnessing it. I know that Mr. Kittess signed it, and I know that Mr. Mills' signature is on there, as a witness to it, but as to remembering or asking him to witness it, or the particular instance leading up to it, I do not recall. Mr. Kittess is not denying his signature on there. But Mr. Kittess said that it was about the noon hour, on account of, he said, that the stenographer was out to lunch at that time, so I remember this, that the boys would in going to and from lunch from the bank, would pass through the office which I used, being there in the front of the bank, at noon-time, so I don't know whether Mr. Mills was going through there and I asked him to sign it at that time or whether it was handed to him; in other words, I have no independent recollection of Mr. Mills siging as a witness there. His signature appears as a witness to this statement.

Q. All you know is his signature is that his signature is there as a witness to this statement?

A. I know that his signature is on there. I know it was customary in the bank for the boys going through the offices

there and being around to witness signatures of various persons in the bank.

Q. Now, Mr. Lewis, were you present at the time that the transaction with R. A. Koons took place, with reference to the A. E. Lewis stocks? A. I was.

Q. I will ask you to tell the court and jury the facts and circumstances of that transaction.

A. In December of 1922—I don't remember the exact date—in December—it was in the latter part of December—my brother called Mr. Koons into his office and told him that he wanted to take a loss on some stock in Chestnut & Smith's subsidiaries, which he had owned for a long time; that he wanted to take a loss in order that he might deduct it from his——

Mr. Dodds: Just a moment; pardon me, in order that I may understand—Were you there when your brother told him that?

A. I was there in the office at the time.

Mr. Dodds: That is what I wanted to know.

A. Told him he wanted to take this loss from the stock and deduct it from his income tax. He wanted to transfer this stock to Mr. Koons, loan it to Mr. Koons, whereby Mr. Koons could borrow money from the Liberty National Bank, as A. E. Lewis was also in need at that particular time of ready cash. So he asked Mr. Koons to execute this note to the bank, secured by this stock, and to transfer this money to him, and that this was to be in the form of a loan on the stock and that any time Mr. Koons wanted this transaction to cease, or any time that A. E. wanted this stock transferred back to him that they would do that; so they executed a letter of agreement, which has been introduced here in evidence which stated that at any time that Mr. Koons desired that A. E. Lewis would take the stock back, or that at any time that A. E. Lewis desired the stock back, that Mr. Koons would take it back and the price of this that he was to take it back for was the same price for which it was transferred; in other words, it was not a bona fide sale, it was not intended as a bona fide sale. It was merely a wash transaction or a loan of the stock made for a two-fold purpose. One was to primarily deduct the loss from his income tax, as this was in December, right at the end of the year, and the other was in order that he might get cash at that time.

Q. Were you there when this letter which has been introduced in evidence as Government's Exhibit No. 55 was executed?

A. I was there when it was dictated to the stenographer. I

was there when Mr. Koons signed it and when A. E. signed it.

Q. I will ask you to examine this Government's Exhibit No. 55 and state whether or not that letter is now in the same condition so far as the language is concerned, that it was in when it was signed.

A. Yes, sir, this is a photostatic copy of the original agreement signed at that time, and the photostatic copy of course contains every detail, no more and no less, than the original instrument would show.

Q. I call your attention to the line in that letter, "All dividends received by you to be returned to me." Was that language in the letter at the time it was executed?

A. Yes, sir, that language was dictated into the agreement to the stenographer, and it was written in there by the stenographer, and it was in there at the time it was executed by A. E. Lewis and R. A. Koons.

Q. Was there any discussion at that time with reference to the dividends on this stock?

A. There was very little discussion about it. There was discussion that the dividends were to go to A. E. Lewis. There was very little discussion at that time, because it was merely a loan of the stock and Mr. Koons was not interested in particular as to the terms or the details of it; all he wanted to know was that when—that at any time that he desired that he could be relieved and that the note would be paid and that he would be paid back sufficient amount to pay the bank, and that was the only part that he was particularly interested in.

Q. Was there any discussion there about A. E. Lewis agreeing to pay him in case he did ask to have this stock turned back to him in—agreeing to pay him interest on the $29,500?

A. That was incorporated in the agreement, itself; as to there being any conversation as to that particular point, I don't recall any.

Q. Now, was this contract—were you present on both occasions that Koons was in the bank there talking to A. E. Lewis?

A. Yes, sir, as I recall it this transaction was fixed up at one time. There is a possibility of it being talked about and his coming back later and making it up, but I think he fixed up the whole transaction at one time, because that was not anything that he had to take time to think about, as to whether or not he really wanted to buy the stock, because he was not buying the stock. It was merely a loan, and the main thing he wanted to know was that this letter was executed, so that any

time he wanted to he could get money sufficient to pay his note to the bank.

Q. The proceeds of this $29,500 went to Koons' credit in the bank, did it not? A. That is correct.

Q. Then he drew his check to A. E. Lewis for the $29,500?

A. Yes, sir.

Q. How was the interest, the initial interest on that loan paid?

A. The initial interest was paid by A. E. Lewis; also the interest that was paid at subsequent times were paid by A. E. Lewis.

Q. Now, at the time of that Koons transaction, was anything said with reference to him getting anybody else to make a similar arrangement with A. E. Lewis?

A. Yes, sir, at the time that this agreement was entered into between A. E. Lewis and B. A. Koons, he asked Mr. Koons if he knew of anybody else that he thought would enter into a similar arrangement with him, and Koons told him yes, that he thought A. N. Ballard, whom he was well acquainted with, would be glad to do the same thing, so Mr. Koons agreed to see Mr. Ballard. He left the bank—Koons left the bank and telephoned back, as I recall it, probably an hour or an hour and a half from the time and said that he had talked to Mr. Ballard and that Mr. Ballard would be glad to do it, and Mr. Ballard would be in, and Mr. Ballard did come in.

Q. Were you present when Ballard came in?

A. Yes, sir, it was some few days later; I don't remember the exact date—four or five days, or perhaps a week later. Mr. Ballard came in the bank and my brother told him of the arrangement he had with Mr. Koons—in fact, Koons, I presume had also told him about the arrangements as he seemed to know considerable about it, and showed him this exhibit, the original of the photostatic copy which you have just shown me—showed that to Mr. Ballard as being the arrangements under which he entered with Mr. Koons, and asked Mr. Ballard if he would enter into similar arrangements, and Ballard told him yes, that he would be glad to. So they immediately prepared an agreement similar to this one, the difference between that one and this one was the amount of the note was different, the description of the stock was different and the date of the note was different, but the contents of the agreements were identical. It was identical in terms, carrying out every detail, that is except the differences which I have just stated.

Q. Was the letter between A. E. Lewis and A. N. Ballard dated and executed on the same date that Ballard's note of $21,750 went into the bank?

A. Yes, sir.

Q. And that was on the 29th of December, was it not?

A. I believe that date is correct. I know it was just before the end of the year, as the primary object of this was on account of the income tax.

Q. Now, how was the initial interest on the Ballard note paid?

A. The initial interest and also the subsequent interest was paid by A. E. Lewis, as they were not owning the stock and receiving no benefits, and they were not intended to pay the interest on the proposition.

Q. Now, how were these payments made, these interest payments made—these initial payments made by A. E. Lewis in the Koons matter and in the Ballard matter?

A. The money was supplied by A. E. Lewis to both Ballard and Koons, and they deposited it to their credit and then wrote checks on their accounts to the bank for the interest. That was the case in the original—when the original interest was paid prior to that time, as I recall it. One interest was charged to Koons' account, yes, sir, I remember now in particular, it was charged to Koons' account and then later deposited back to his account by A. E. Lewis. In other words, A. E. Lewis furnished all the money to pay the interest on both the Koons note and the Ballard note, as neither Ballard nor Koons had any interest in the stock and of course would not be asked to pay the interest.

Q. Now, I will ask you to state, Mr. Lewis, whether or not Mr. Koons or Mr. Ballard at any time after that transaction came into the bank to make any inquiries about these notes that they had executed? A. They did not.

Q. Did they come into the bank to——

Mr. Dodds: Just a moment; are you stating to your own knowledge that they never came in there to make such—to your brother?

A. Yes, sir.

Mr. Dodds: You know that they never came in there at any time?

A. I know that they never did; for this reason: that they told me that they never did, and he told me that they never did, and I never heard it, so I got it from all parties concerned.

By Mr. Davidson:

Q. You are basing it from what all parties said?

A. I am basing it from all parties that were concerned in the transaction, together with my own information.

Q. You heard both Mr. Ballard and Mr. Koons testify

in the case that neither of them had been in there to see about it?

A. I have, and I also heard them tell, at the time my brother, Ervin Lewis, took over this option on this stock, that they had never been in about the note and that they were not concerned about it.

Q. Now they did come there to the bank from time to time with checks representing the dividends on these stocks, did they not. A. They did.

Q. I wish you would tell the court and jury how those matters were handled, and to whom did Ballard and Koons deliver those checks when they came to the bank?

A. They would receive the dividend checks from the company, in the form of dividend checks, and they would bring those checks in and deliver them to A. E. Lewis, personally. They would never deliver them to the bank; they would never deliver them to anybody else in the bank.

Mr. Dodds: Just a minute. I object to this witness' testimony to the effect, he can't possibly know what he is talking about—could not know.

Mr. Davidson: You were there in the bank on those occasions when they came in there, were you?

A. Yes, sir, I was.

Q. You knew what happened? A. Yes, sir.

Mr. Davidson: All right, go ahead.

Mr. Dodds: Now, just one moment. Are you testifying that you were in the bank on every occasion when either Koons or Ballard came in with those 15 or 16 checks?

A. I believe I was in there on every occasion that they came in. They handed them to A. E. Lewis. There might possibly have been a time, but I don't think there was any time they brought in the checks that I was not there.

Mr. Dodds: You don't know whether they came in at times you were not there, do you?

A. From the checks themselves, I think I was there.

Q. You can remember from the date of those checks?

A. No, sir, I think I can remember I was there.

Q. From the date of the checks there?

A. From the time they brought the checks in I believe I was there on each occasion; I am not positive of that.

The Court: Proceed.

By Mr. Davidson:

Q. How were they handled?

A. These checks were brought in and delivered to A. E. Lewis personally. They were handed to him for his personal

use. They were used by him in whatever manner he saw fit. I don't know whether he took credit for them in every instance, or whether he cashed them or whether he applied them on his indebtedness to the bank, but at any rate they were given to him for his personal use.

Mr. Dodds: Just a moment; I object to the witness' answer to that, that they were given to A. E. Lewis for his personal use. The checks themselves bear on them the statement that they are in payment on notes and he could not know anything different.

The Court: It would be a mere conclusion. Proceed.

By Mr. Davidson:

Q. Now, Mr. Lewis, you have seen those checks of Koons and the dividend checks payable to A. M. Ballard. Do you know, from your conversations with Koons or Ballard, or from any other source, why these notations were put on those checks? A. Yes, sir.

Q. Payment on note? A. Yes, sir.

Q. Please tell the court and jury what it was.

A. I know of that, both from them and from the original agreement which was entered into at that time; the original agreement which was entered into at that time——

Mr. Dodds: We object to any testimony as to why he knows the notes were paid in any—the checks were paid in any particular manner, because of the original agreement.

Mr. Davidson: Just leave that out.

Mr. Dodds: The agreement itself speaks for that; it is here in evidence.

Mr. Davidson: That is true.

The Court: Yes.

A. Mr. Ballard and also Mr. Koons said on several occasions that I heard and they have also testified to that effect, that those notations were placed on those checks for their own personal information, or their own bookkeeping.

Q. Were you present on an occasion when Mr. Ballard came in to see Mr. Lewis about a divident check that he said he had used out in Colorado? A. I was.

Q. I will ask you to examine Defendants' Exhibit 22 and state whether or not that is a check that was involved in that transaction? A. It is.

Q. I will ask you to state what was said in that conversation with reference to that check?

A. This is the check of the Moon Gasoline Company, be-

ing dividend No. 20, issued to A. M. Ballard on the stock which A. E. Lewis had loaned to Mr. Ballard. This dividend was received by Mr. Ballard at the time he was in Colorado Springs on his vacation. All this now is what he told my brother and myself in the Liberty National Bank.

Q. After he had returned from Colorado? A. Yes, sir.

Q. All right.

A. This check he said was received by him when he was on his vacation. He said he was in need of some money at that time and just took the liberty of using this check in place of sending it to A. E. Lewis and asked A. E. if that was all right, and A. E. told him yes. He says, "Now, I will pay you back in a short time." So, sometime later, perhaps a month after this, he came into the bank with a check made payable to A. E. Lewis and told him, "There is the money I borrowed from you without your consent while I was in Colorado Springs, sometime ago."

Q. I hand you Defendants' Exhibit No. 23, and ask you to examine it and state whether or not that is the check Mr. Ballard gave A. E. Lewis on that occasion?

A. Yes, sir, that is the check, it is made payable to A. E. Lewis. It was given to him for this dividend check which A. E. Lewis was rightly entitled to which Mr. Ballard used on his vacation.

Mr. Davidson: We offer in evidence, if your honor please, Defendants' Exhibit No. 22, and Defendants' Exhibit No. 23.

The Court: All right.

(Thereupon Mr. Davidson read Defendants' Exhibits Nos. 22 and 23 to the jury.)

A. May I see those checks just one minute, please sir?

Q. Yes. Now, Mr. Lewis, did Mr. Koons have any other indebtedness at the bank besides the $29,000.00?

A. Yes, sir, he owed another note or possibly two notes. One note I know of particularly he owed to the bank besides this note.

Q. Were any payments made by him on those notes?

A. Yes, sir, Mr. Koons owned stock in the same corporation that this stock which A. E. Lewis had loaned to him, so when he would receive his dividends on the stock he would receive his dividends in a lump sum. In other words, it would cover the stock which A. E. Lewis owned and loaned to him and would cover the stock which Koons owned himself. When these dividend checks were received by Mr. Koons he would deposit them to his account in the lump sums that came to

him; then he would sit down and write two checks for the total amount of this, one of these checks he would deliver to the Liberty National Bank to make reductions on his note to the bank; the other checks which represented the dividends on the stock which A. E. Lewis owned he would deliver check to A. E. Lewis. In other words he would execute two checks, divide this dividend into two checks and give A. E. Lewis a check for the amount that belonged to him and the other he would deliver to the discount clerk at the Liberty National Bank and it was credited on his note.

Q. Now, at the time this Koon's note of $29,500.00 was made to the Liberty National Bank, did you believe that was a solvent, collectible note? A. Yes, sir.

Q. Did you or anyone connected with that transaction, so far as you know, have any intention of injuring or defrauding the Liberty National Bank or anybody else?

A. No, sir, no such intention.

Q. At the time of the execution of the Ballard note to the Liberty National Bank for $21,750.00, did you believe that that note was solvent and collectible? A. Yes, sir, it was.

Q. Did you or anyone connected with that transaction, so far as you know, have any intention of injuring or defrauding the Liberty National Bank or anyone else?

A. No, sir, no such intention.

Q. These stocks were put up as collateral security behind each of these notes, were they? A. Yes, sir.

Q. The stock in the Ballard transaction was issued by the companies in Ballard's name and by him endorsed and put up with the bank behind these notes?

A. Yes, sir, that is correct.

Q. And the stock that was issued to Koons was issued in Koon's name, endorsed by him and put up behind the Koon's note in the bank? A. Yes, sir.

Q. I will ask you whether or not the Ballard note and Koons note were at all times solvent and collectible notes?

A. They were.

Q. Were you present at A. E. Lewis' home in Tulsa along in the latter part of November, 1923, after the Security National Bank had purchased the assets of the Liberty National Bank when Mr. Ballard and Mr. Koons came out there to see A. E. Lewis? A. I was.

Q. Were you present during all the time they were there?

A. Yes, sir, they were there on three different occasions, I was there on each occasion.

Q. On each occasion? A. Yes, sir.

Q. You heard Mr. Koons testify here on the first occasion that A. E. Lewis asked him if he could buy those checks, re-

ferring to the Koons' checks that have been introduced in evidence here?

A. I heard Mr. Koons testify to that, yes, sir.

Q. Did anything of that kind transpire?

A. No, sir, nothing like that was ever said.

Q. Did you hear the entire conversation that took place there?

A. I was out of the room, I don't think to exceed one minute and that was the only possibility of any conversation taking place. It could then, but I don't think it did.

Q. You heard all the conversation that took place in the room while you were there? A. Yes, sir.

Q. And nothing of that kind transpired while you were there? A. That is correct.

Q. Did anything of that kind transpire at any conversation out there? A. No, sir, never did.

Mr. Dodds: Just a minute. You mean at any conversation where you were present?

A. I was present at all the conversations.

Mr. Dodds: Just a minute. You say now that any conversation of that kind didn't take place at any time out there. I am objecting to that question unless you qualify it.

The Court: Of course he has to be present.

Q. Did anything of that kind take place in your presence?

A. No, sir.

Q. On any occasion when Ballard and Koons were out there? A. No, sir.

Q. And you were present during all of these conferences out there at A. E. Lewis' except about one minute on the first occasion? A. Yes, sir.

Q. Were you present when the final agreement was made which is marked Defendants' Exhibit No. 20?

A. Yes, sir, I was.

Q. You examine that exhibit, Mr. Lewis, and tell the court and jury as near as you can just what transpired on that occasion?

A. This original agreement which was entered into which you have is the photostatic copy here, as of December, 1922. At that time this stock was loaned by A. E. Lewis to Messrs. Koons and Ballard for the two-fold purpose of getting a reduction on the income tax and also to get some cash on the notes. In this letter of agreement he agreed to buy this stock back at any time and Koons in this letter of agreement also agreed that this stock should be transferred back to him at any time, and when the Liberty National Bank was sold to

the Security National Bank these notes were among the other notes in the assets that were transferred to the Security National Bank. They called, so Mr. Koons says, him by telephone and asked him about his notes. He wrote a letter then to A. E. Lewis which the plaintiff has introduced in evidence, asking him what he would do, what he could do about this, and if he would not take care of the proposition so that he might be relieved. In other words, he wanted A. E. Lewis to relieve him as per the agreement of A. E. Lewis he would take this stock back at any time for the original price.

Q. Now, what was said on the occasion when that agreement was signed, Mr. Lewis? Who was present on that occasion?

A. M. H. Silverman, Charles L. Yancey, E. G. Lewis, A. M. Ballard, R. A. Koons, my brother and myself.

Q. Did Ballard and Koons come out there together on that occasion or were you there when they arrived? A. I was.

Q. Did they come together?

A. Ballard and Koons and Charles Yancey came to the door at the same time.

Q. Was Silverman there at that time? A. He was.

Q. Was E. G. Lewis there at that time? A. He was.

Q. Now, when did you first see that paper that is Defendants' Exhibit No. 20?

A. The first time I ever saw this paper was on the occasion of the meeting you just mentioned.

Q. Who had it? A. Ballard and Koons had the paper.

Q. What was done and what was said with reference to it? A. They asked that this paper be executed.

Q. In what form was it at that time? Did it have the writing on it that is on it there now in pen and ink?

A. It did not, just the typewriting on here and no signatures attached to it at that time. They asked that this be executed. Mr. Silverman who was representing Erwin G. Lewis, being another brother, not the defendant in this case, and A. E. Lewis and myself was there. He read this agreement. He told Ballard and Koons that this agreement was not in keeping with what we had told him was the verbal agreement when this transaction was entered into; it was also not in keeping with the written agreement which they had executed and that according——

Q. Did they have the photostatic copy of the Koons agreement there on that occasion?

A. He did. Mr. Koons had the photostatic copy there at that time.

Q. Was anything said by him or by Ballard either one

at that time or any time previous to that about this line with reference to dividends not being in the agreement?

A. Prior to that time Mr. Ballard had told A. E. Lewis that that line was not on the original agreement, but A. E. told him he knew it was and Ballard knew it was so when this final agreement was made this line that he claims was not in there was never mentioned. In all these transactions where this settlement was made, there was never a thing said about that line not being in there. Koons didn't deny it, it wasn't even discussed, the line was in there originally, he knew it was in there originally and there was no occasion for its having been discussed.

Q. All right, go ahead and tell what transpired there?

A. At this time Mr. Silverman told them this was not in keeping with the verbal agreement and it also was not in keeping with the written agreement as shown from the photostatic copy, and if they were claiming they were entitled to the dividends tho the written part would indicate, that he would not advise E. G. Lewis to exercise that option, and they said he wanted them to sign something else just merely stating an option on there. They stated they oneldn't sign it that way if they did. Ballard said that will make me out a damn liar down to Mr. Ramsey at the Security National Bank. By the way I may say Mr. Ramsey was president of the Security National Bank at that time. He says, I have told Mr. Ramsey that Koons and I were entitled to these dividends. Silverman said, "You can see by this you were not entitled to them, and you know you were not entitled to them." He says, "Yes, I know we were not entitled to them."

Mr. Dodds: Just a minute. The witness points and says, "You can see by this."

A. I mean the photostatic copy that Mr. Koons had there at that time.

Mr. Dodds: You mean he can see by this (indicating) and not by the paper you were pointing to there.

A. Yes, sir, I was not conscious of the fact I was pointing to any paper, Mr. Dodds. Thank you. They admitted they were not entitled to these dividends, so Ballard repeated some three or four times he *he* could not sign any agreement that would come out right and said anything other than that it would make him out a damn liar down at the Security National Bank and he couldn't afford to do that, and Mr. Silverman told him if that is what you are holding out for I can modify the agreement you have so it will state the facts and at the same time so Mr. Ramsey will not perhaps construe as you state have been a damn liar. So he took this agreement

here which is Defendants' Exhibit 20 and he wrote the part in with pen and ink which appears on this agreement, stating that they were perhaps erroneous.

Q. Which states what is in here?

A. Yes, sir, that they were perhaps erroneous in their opinion relative to their being entitled to the dividends and I might say before he wrote that and during the time he was writing that, that Mr. Ballard kept injecting words. In other words, Mr. Ballard didn't want him to make it any stronger than necessary on account of what he told Mr. Ramsey. So when this was written Ballard and Koons both read it, they then handed it to Mr. Yancey, attorney for the Security National Bank and also appeared to be representing them in this instance, and they asked Mr. Yancey what to do about signing it; Yancey says, "Boys, just one thing, if those are the facts as stated on here sign it, if they are not the facts, don't sign it." Mr. Ballard then answered by saying "Those are the facts but if I make it strong it will sure make me out a damn liar to Mr. Ramsey," and Mr. Yancey again repeated, "If those are the facts, boys, sign it," and they took the pen and signed it, and my brother exercised the option, Erwin Lewis, not the defendant here, exercised the option and executed this paper.

Q. This $14,000.00——

Mr. Dodds: Just one moment. You say your brother exercised the option?

A. No, sir, I say he executed this paper which is Defendants' Exhibit No. 20.

Q. This $14,000.00 was paid by whom?

A. Paid by Erwin Lewis, a brother of mine, not the defendant.

Q. To whom was it paid?

A. Paid to Ballard and Koons. My recollection it is was counted to Mr. Ballard, however, I am not positive of that any further than what Mr. Koons said. I know it was paid for the benefit of the two of them.

Q. Now, I will ask you, Mr. Lewis, whether or not there was any intention on your part or any one else connected, so far as you know, with the Ballard or Koons transaction of injuring or defrauding the Liberty National Bank?

A. No, sir, no such intention. Everything that was done was done in accordance with——

Mr. Dodds: Just one moment. I object to the question and his answer. He cannot testify to anyone's intention but his own.

The Court: No. He has answered the question. Proceed.

Q Now, Mr. Lewis, I want to ask you whether or not there were any securities given to secure the Mingo Company's note of $33,000.00?

A. There was, there was a mortgage given.

Mr. Dodds: I object, the mortgage itself is the best evidence. If there were any securities, let them produce them here.

Q. I hand you a paper marked for identification, Defendants' Exhibit No. 31, and ask you to examine and state whether or not that mortgage was executed and delivered as security for the notes described in it?

A. Yes, sir, note for $33,000.00 signed Mingo Company by R. C. Lamprich, secretary and treasurer. Mortgage of oil and gas leases.

Q. I hand you a paper marked for identification Defendants' Exhibit No. 32——

Mr. Dodds: No objection to introduction of Exhibit No. 31.

Q. And also Defendants' Exhibit No. 33, and also paper marked Defendants' Exhibit No. 34, and ask you to state what those are?

Mr. Dodds: Just a moment. Before you go into the contents, I wish you would submit them to me, so I may examine them before the contents of the instruments are read.

Mr. Davidson: Defendants' Exhibit 31 is a mortgage on oil and gas leases made by A. E. Lewis to the Liberty National Bank on the 22nd day of August, 1923, to secure three notes, one note for $34,000.00 dated July 16, 1923, signed by A. E. Lewis, one note in the sum of $34,000.00 dated July 16, 1923, signed by W. L. Lewis, one note in the principal sum of $33,000.00 dated May 24, 1923, signed by the Mingo Company by R. C. Lamprich, secretary and treasurer, and covers certain oil and gas interests which appear in the mortgage.

Mr. Dodds: No objection to the introduction of 32, 33 and 34.

Mr. Davidson: We offer in evidence Defendants' Exhibits 32, 33 and 34.

The Court: Very well.

Mr. Davidson: Defendants' Exhibit 32 is a mortgage on oil and gas leases made by the Lincoln Company to the

Liberty National Bank on September 20, 1923, to secure four notes, one in the sum of $20,000.00 dated August 27, 1923, signed by the Lincoln Company, one for $2,000.00 dated September 10, 1923, signed by the Lincoln Company; one for $7,500.00 dated September 15, 1923, signed by the Lincoln Company, and one for $3,300.00 dated September 20, 1923, signed by the Lincoln Company and covers certain oil and gas rights. Defendants' Exhibit 33 is a mortgage on oil and gas leases made by the Lincoln Company to the Liberty National Bank on September 20, 1923, to secure the same notes covering certain other oil and gas rights. Defendants' Exhibit No. 34 is a mortgage on oil and gas leases made by the Lincoln Company to the Liberty National Bank on September 20, 1923, to secure the same notes and covering certain oil and gas rights therein described.

Mr. Williams: Let the record show that each one of these is considered read in full with the court's permission.

Mr. Davidson: Each one of these exhibits is read to the jury.

The Court: All right.

Q. Now, Mr. Lewis, I hand you Defendants' Exhibits Nos. 35, 36 and also Defendants Exhibit No. 37.

Mr. Dodds: No objection to 35, 36 and 37.

Mr. Davidson: We offer in evidence, if your honor please, Defendants Exhibits 35, 36 and 37.

The Court: Very well.

Mr. Davidson: Ehixit 35 is a mortgage on real estate made by the Lincoln Company on September 20, 1923, to the Liberty National Bank to secure these same notes as in the other exhibits just offered in evidence covering certain real estate therein described. Exhibit No. 36 is a mortgage on real estate made by the Lincoln Company to the Liberty National Bank on September 20, 1923, covering certain real property therein described to secure the same notes. No. 37 is a mortgage by the Mingo Company made to the Security National Nank on the 13th day of November, 1923, covering certain lands and real property therein described. May the record show they are read in full to the jury, if your honor please?

The Court: Yes.

Q. Mr. Lewis, I will ask you to state whether or not you were you called on after the Security National Bank had taken

over the assets of the Liberty National Bank under the contract of sale to do anything further toward the protection of the depositors of the old Liberty National Bank? A. Yes, sir.

Q. What was it, and what were the circumstances?

A. We were asked to have our wives and ourselves to execute deeds to our homesteads.

Q. Did you do that?

A. We did in order to protect the depositors of the old Liberty National Bank, we executed those deeds.

Q. I hand you Defendants' Exhibits Numbers——

Mr. Dodds: Just one moment. He says in order to protect the depositors. Do you mean you did that without consideration or were you paid for the houses?

Mr. Davidson: I will cover that.

Q. I hand you Exhibits 37 and 38 and ask you to state whether or not those are conveyances to your homesteads?

A. They are.

Mr. Dodds: No objection.

Mr. Davidson: We offer in evidence Defendants' Exhibits 37 and 38, if your honor please.

The Court: Very well.

Mr. Davidson: No. 37 is a deed of A. E. Lewis and Mildred B. Lewis, his wife, to the Security National Bank conveying certain property therein described.

Q. Mr. Lewis, will you please state whether or not the property described in this deed, Defendants' Exhibit 37, was the homestead of A. E. Lewis and his wife? A. It was.

Mr. Davidson: We offer in evidence Defendants' Exhibit No. 38 which is the deed from W. L. Lewis and Lina T. Lewis, his wife, to the Security National Bank on the 12th day of November, 1923, covering certain real estate.

Q. Will you please state whether or not that was your homestead? A. Yes, sir.

Q. Did you live at the time in this property? A. Yes, sir.

Q. Did A. E. Lewis and his wife live at the time in the property live in the property covered by their deed?

A. Yes, sir.

Q. Now, Mr. Lewis, I want you to tell the jury just what happened and what was done with reference to the execution of those deeds and what consideration passed for them?

A. We were called down to an office in the Palace building as I recall it, the night those deeds were executed, and told by Mr. Griffey——

Q. Now, who was Mr. Griffey?

A. National Bank Examiner, who has testified here in

the early part of this case, that, just to use his language as nearly as I can, he said "We have a busted bank in town," he says, "the Security National Bank; that was the bank which had purchased the Liberty National Bank, who will not be able to open tomorrow morning unless you deed—addressing his remarks to my brother and myself—unless you deed your homesteads to them. So we discussed that at some length and we—they—Mr. Griffey said that the Security National Bank was in bad shape primarily on account of having purchased the Liberty National Bank, and that since we had the Liberty National Bank prior to that time that it would be our old depositors that would lose money if the Security National Bank could not open up, and he thought we ought to deed these homesteads in; so we did. We deeded our homesteads in at that time, our wives came down probably three or four o'clock in the morning and executed the deed, and in payment for these homesteads we received paper in the total amount of—I don't remember the exact amount; it was probably $125,000 or $130,000 paper which had been charged off of the Security National Bank as being worthless paper at the request of the examiner, as being——

Mr. Dodds: Now, just a minute; I object to this statement unless the paper is named. He says paper that had been charged off as worthless paper to the Security National Bank.

A. I am stating what Mr. Griffey told me at that time, if your honor please, at the time he asked us to turn this over.

Mr. Dodds: Just a minute; just wait until I get through with my objection. I think, if your honor please, that any statement that somebody else made, that the paper had been charged off, if there is original evidence here of that, that it ought to be presented. That is all.

The Court: Well, of course he is stating what this man told him, and that is all.

Mr. Davidson: That is all.

Mr. Dodds: If he confines it to what Mr. Griffey told him, all right.

A. For Mr. Dodds' benefit——

The Court: Never mind about benefit, now; you just answer the questions.

By Mr. Davidson:

Q. Just answer the questions.

A. Mr. Griffey told us that, Mr. Ramsey, who was president of the Security National Bank, and Mr. Sieger, who was

vice-president of the Security National Bank, also confirmed Mr. Griffey's report that this had been charged off—this paper had been charged off, and they had a list of the paper there. I don't recall now——

Q. Who received that paper? A. Our wives.

Q. I will ask you to state, Mr. Lewis, what was the reasonable market value of your homestead at that time that was conveyed to the Liberty National—to the Security National Bank? A. About 75 or 80 thousand dollars.

Q. What was the reasonable market value of the home of A. E. Lewis that was transferred to the Security National Bank at that time? A. Probably $130,000 or $135,000.

Q. Now, Mr. Lewis, I will ask you this question: Whether or not you and your brother, A. E. Lewis, have surrendered all of your assets, of every kind and character, in the liquidation and protection of the indebtedness of the obligations that you and the companies that you were interested in owed to the Liberty National Bank and in the protection of the depositors of the Liberty National Bank?

Mr. Dodds: Just a minute, before you answer. I object to the question. Let him state what he turned in.

The Court: Well, he may answer this question. Answer.

A. We deeded and signed over everything that we had.

Q. Now, Mr. Lewis, you have seen the Government's Exhibits in this case, which are——

Mr. Davidson: Where are those reports to the Comptroller of the Currency?

Q. These three reports to the Comptroller of the Currency, which are marked Government's Exhibits Nos. 41, 42 and 43, and I will ask you to examine Government's Exhibit 41 with reference to the item of loans and discounts contained therein and state whether or not you made the entry of the amount of loans and discounts there? A. No, sir, I did not.

Q. Did you direct anybody to make that entry?

A. No, sir, I did not.

Q. Did you have anything to do with the making of that entry in that report? A. Nothing whatever.

Q. I will ask you the same question with regard to the item of $2,074,216.12, under loans and discounts, in Government's Exhibit No. 43?

A. The same answers apply to this exhibit as to the previous exhibit.

Q. I will ask you the same question, with regard to the item of $2,106,039.51, under loans and discounts, in Government's Exhibit No. 42?

A. The same answer applies as applied to exhibit No. 41.

Q. Mr. Lewis, please state whether or not the books of the Liberty National Bank disclosed all the information to the party who made out these reports that was necessary to get the data and information to make them out?

A. Well, the books of the bank contained everything that was called for in those statements.

Q. What books of the bank would show that?

A. A general statement would give all the information, I believe, that is called for in there. It might require some other book or book of accounts to show that, but I believe the general statement would give it all.

Q. The note case was open to the clerks of the bank there, in making up these statements, wasn't it? A. Yes, sir.

Q. The liability ledger was open to them? A. Yes, sir.

Q. And the blotter and discount register and all the books of the bank there were open to them? A. Yes, sir.

Q. Now, Mr. Lewis, you have heard the testimony here with reference to this minute book. I wish you would tell the jury just how these minute books—kill that question just a moment, please. Was there a stockholders' meeting of the stockholders of the Liberty National Bank held on January 9, 1923? A. Yes, sir, there was.

Q. Was notice of that meeting sent out to all of the stockholders previously? A. It was.

Q. Were any of the stockholders represented at that meeting by proxy? A. Yes, sir.

Mr. Davidson: Let me have those proxies, Mr. Genau.

Q. Did you make any inquiry at the Security National Bank with reference to these proxies of the stockholders?

A. Yes, sir, I made inquiries relative to those, as well as to others. I made inquiries relative to all proxies which were down there, but these were the only ones which we were able to find.

Q. Who took possession of all of the papers and documents of the Liberty National Bank after the Security purchased the assets of the Liberty?

A. Well, at that time the Security National Bank did. Later, Mr. Genau and the other members of Mr. Dodds took charge of them. We asked for the——

Q. Upon the consummation of the deal with the Security National Bank, all the documents and papers of the Liberty passed to the Security National Bank? A. Yes, sir.

Q. And were in the possession of the Security National Bank? A. Yes, sir.

Q. Will you please state whether or not you got any in-

formation from the officers of the Security National Bank about these proxies when you asked for them.

A. I asked for them, and they told us there was no proxies there. We asked them to search and we kept insisting on their searching and it was four or five different times——

Mr. Dodds: Just a minute; you say you asked for them and they told us. Who do you mean?

A. I mean the Security National Bank—Mr. LeBus and Mr. Sieger told us that they searched for these and they could not find them.

Mr. Dodds: Could not find them, yes.

A. We also asked Mr. Genau about them and he told us that they were not there. We asked him then if we might come down and search for them and he told us we could. We made an appointment with him—by "we," I mean my attorney, Mr. Davidson and myself—we made an appointment to go down and search for these records. We went down there and Mr. Genau wasn't there. We made two or three different appointments, and finally we left word for him to call.

Mr. Dodds: All I wanted to know: You had free access to the records?

A. We did not have free access until the time I am just telling you about now. Mr. Genau called up by telephone and told us if we would come down we could search for them.

Mr. Dodds: You had free access of the records as far as the Government is concerned.

Mr. Davidson: I think you had better let me examine the witness and cross examine when I am through.

The Court: Probably so, but if the witness would answer your question we would not be having so much stuff. Proceed.

By Mr. Davidson:

Q. Now, I hand you certain papers, Mr. Lewis, and I will ask the reporter to mark them for identification "Defendants' Exhibits 39 to 45" inclusive. May I ask you to examine these exhibits, Nos. 39 to 45 inclusive, and state whether or not those papers were found by you on your investigation of the —at the Security National Bank, among the files of the Liberty National Bank, then in possession of the Security National?

A. Yes, sir, these were out of the regular files, where they belonged; these were found in a box with the other files, but were not in the files where they would naturally belong, with the other business pertaining to the Liberty National Bank.

Q. I will ask you if you were acquainted with the signature of Mabel M. Mitchell, with Sara B. Mitchell?

A. With that signature, yes, sir.

Q. C. C. Simmons? A. Yes, sir.

Q. Mrs. Charles Stunkard? A. Yes, sir.

Q. Nora I. Suppes? A. Yes, sir.

Q. Charles Stunkard? A. Yes, sir.

Q. J. H. Powers? A. Yes, sir.

Q. Are they the genuine signatures of those parties?

A. They are, with the possible exception of this one, which I am not familiar with. I am familiar with the one who witnessed this one, but not the other signature, Mabel M. Mitchell

Q. Is the witness' signature the genuine signature of Sara B. Mitchell? A. Yes, sir.

Mr. Davidson: Do you want to see these?

Mr. Dodds: No.

Mr. Davidson: We offer in evidence exhibits 39 to 45 inclusive, which are the proxies of the January meeting, January 9, 1923, and the record may show they were read to the jury.

Mr. Williams: And the two deeds; let the record show them read to the jury.

Mr. Davidson: The record may show that the two homestead deeds were read to the jury.

The Court: Very well.

By Mr. Davidson:

Q. Mr. Lewis, were there other proxies at that meeting than those offered in evidence in this case?

A. Yes, sir, these proxies which were found were found in four or five different places, all scattered around down there.

Q. Who was present with you at the Security National Bank when these proxies were found?

A. You were present and also my brother was present.

Q. Did your brother and myself engage with you in the search of the files for these proxies?

A. Yes, sir, we went through——

Q. I will ask you to examine Defendants' Exhibits No. 46 and 47 and state whether or not these two papers were found at the same time. A. They were.

Mr. Dodds: May I see them?

Mr. Davidson: Yes, sir, they are copies of the notices to the stockholders.

The Court: Very well.

Q. Do you know what was done with the originals of these two letters?

A. No further than it was the duty of the cashier to mail notices to each and every stockholder and he informed us that he did, and copies of all of those were in the files of the Liberty National Bank when it was sold to the Security National Bank.

Q. You haven't the originals of these letters?

A. No, sir, they would be mailed to each and every stockholder.

Q. And these are carbon copies?

The Court: There is no objection to it; just use it.

Mr. Davidson: All right. These are notices of stockholders' meeting, January 9, 1923, to Nora I Suppes and J. H. Powers.

A. Carbon copies of the letters.

Q. Now, after that stockholders' meeting was held——

The Court: How long will it probably take to complete this case?

Mr. Davidson: It will probably take—well, I can't tell, if your honor please, how long it will take.

The Court: Very well. You will have to prepare for a night session. I have to get away from here. You gentlemen will be excused until 2:00 o'clock this afternoon.

(Thereupon, the jury retired in the custody of the officers.)

The Court: Announce a recess of the court until 2:00 o'clock this afternoon.

(Thereupon, pursuant to the order of court, court takes a recess until 2:00 o'clock p.m.)

At 2:00 o'clock p.m., January 26, 1926, court met pursuant to adjournment, the parties being present and represented by counsel as hereinbefore noted, whereupon the following proceedings were had and done, to-wit:

The Court: Proceed with the trial.

Mr. Williams: If your honor please, I notice there a letter there for one of the jurors.

The Court: I suppose there are no objections to him having it.

Mr. Davidson: We have no objection, if your honor please.

Direct Examination of the Witness, Wm. Lloyd Lewis, Resumed by Mr. Davidson.

Q. Mr. Lewis, how much of the stock of the Liberty National Bank did you and A. E. Lewis own on the 9th of January, 1923, the date of the stockholders meeting?

A. I haven't those records before me, and Mr. Genau didn't bring them down. It was approximately three-fourths of the capital stock of the Liberty National Bank. We owned various amounts along from two-thirds to three-fourths of the amount, that is A. E. Lewis, my brother and myself.

Q. Now, I wish you would tell the court and the jury just what was done as far as you know, Mr. Lewis, in the way of holding these directors meetings that have been introduced in evidence as Governments Exhibits in this case.

A. Those meetings were held in a very informal manner. A number of years ago, I don't remember the exact——

The Court: Please don't relate a number of years ago. Get down to date.

A. The directors didn't want to come in and hold their regular meeting in the regular form according to parliamentary rules in parliamentary practice.

Mr. Lee: Wait; we think those are conclusions drawn by the witness. We don't object to any of the facts.

The Court: Yes, no matter what they wanted at all.

A. At these meetings I refer to as of 1923, A. E. Ross and my brother and myself were there on each occasion, and on the other occasions some of the people were present and some of them were not. There was no parliamentary practices or no parliamentary rules carried out in the holdings of these meetings. Mr. Ross had an office above the bank during most of the life of the bank on the second floor, and he was in the bank practically every day, Mr. Greis had an office with him for a number of years, and was in partners with him and later had an office in another building, and he was in the bank frequently but not as frequently as Mr. Ross. Mr. Kramer was also in the bank frequently but not as frequently as Mr. Ross.

Q. Did you or A. E. Lewis ever insist on Mr. Ross and Mr. Greis and Mr. Kramer attending directors meetings?

A. We asked them to do it a number of years ago.

Q. How long had this system of handling the minutes of the meetings of directors continued?

A. I would say some seven or eight years, or possibly longer.

Q. It was not a new procedure, then, during 1923?

A. No, sir, this same plan had been carried out and signed by the directors for some seven or eight years.

Q. You heard Mr. Lamprich, I believe it was, testify that you told him to sign Mr. Ross' name to certain of these minutes in this book where you signed the name—did you hear that testimony? A. I heard that testimony.

Q. Was that true or not?

A. No, sir, I never told him in my life to sign Mr. Ross' name.

Q. Did you yourself ever ask Mr. Ross or anyone else that signed the minutes of these meetings to sign them?

A. No, sir.

Q. Who was the discount committee during 1923?

A. A. E. Ross and E. A. Lewis—I beg your pardon. I just reversed the initials; A. E. Lewis and E. A. Ross and myself.

Q. Now tell the court and jury just how this discount committee handled passing on those loans from time to time.

A. We would discuss the various loans of the bank, new loans that were made and loans that were paid, general conditions and the running of the bank with Mr. Ross and we would call that our meeting. As I said, we followed out no parliamentary rules, where a meeting was called to order and one person would move a certain thing and the other person would second it, and the motion would be put to a vote; those things were never done. But we talked the matters over and the conditions of the bank and what was being done in the bank, and then the minutes were written up in accordance with that and signed by Mr. Ross and my brother.

Q. Now, what was the method of handling the examination of the expense account and the action taken by the directors on that?

A. That was not examined in the regular manner.

Q. Did you and Mr. Ross and A. E. Lewis discuss the expense account from time to time?

A. We would discuss just general conditions of the bank.

Q. You heard Mr. Ross testify in this case, didn't you?

A. I did.

Q. You heard his testimony, where he said that he had talked with A. E. Lewis about signing—about writing up these minutes, as though they were held in the way they were, and that A. E. turned around to you and told you that you better have the directors there? A. I heard that.

Q. Did any such conversation as that take place?

A. I never heard any such conversation as that in my life. I beg your pardon; I heard the testimony, but never heard the conversation to that effect.

Q. Nothing of that kind was said?

A. Nothing pertaining to that matter that I ever heard; in fact, these meetings were held in keeping with Mr. Ross'

wishes, and he signed the minutes of the meeting and also signed the directors' letters.

Q. Now, did Mr. Greis and Mr. Kramer know that these directors meetings were being held in the manner they were and that the minutes were being written up in this way, if you know?

Mr. Lee: If you know—did they know; he is testifying as to the knowledge of somebody.

Mr. Davidson: He may know whether they knew it or not.

The Court: He may state whether he knows or not.

A. I know that they did, if your honor please, and I can tell you why I know, if you prefer.

Q. I would like for you to tell how you know.

A. I know that they knew it for this reason: It was their request, all of the directors, that it be done in that manner, and we did it in that manner and then they signed the minutes themselves and signed the letters to the Comptroller of the Currency, stating that these minutes—these meetings were being held. A portion of those letters have been introduced in evidence; others we have been unable to find at the Liberty National Bank, but there has been some six or seven introduced here in evidence, which shows——

The Court: The jury knows what is in evidence.

A. I beg your pardon, your honor.

The Court: Counsel and the jury know what is in evidence.

A. Yes, sir; I beg your pardon, your honor.

By Mr. Davidson:

Q. Now, when these bank examiners were there and examined the bank, Mr. Lewis, were any of the directors present there and went over the note case with them?

A. They were in some instances. Mr. Ross was usually there, and once in a while Mr. Greis was, but not very often.

Mr. Dodds: Just a moment; when do you mean, Mr. Davidson?

Mr. Davidson: During 1923.

A. The answer is the same; Mr. Ross was there occasionally—quite often; Mr. Greis was *their* occasionally.

Q. Well, now, when the bank examiner finished examination did he prepare a letter, dictate a letter himself for the directors to sign? A. He did.

Q. And what was done with that letter?

A. That was taken around and all of the directors, for their signature, at the request of the examiner.

Q. Now, were minutes of the directors meetings, showing meetings of the board of directors on dates this examiner was there? A. Yes, sir.

Q. That was in some cases?

A. Yes, sir, that was in some cases.

Q. Now, the bank examiner examined these minutes, the next time he came back, didn't he?

A. Yes, sir, presumably so, he went to them.

Mr. Dodds: Just a minute, What examiner?

Mr. Davidson: I don't remember whatever national bank examiner was there to examine the bank.

Mr. Dodds: In what year?

Mr. Davidson: In 1922 and 1923.

The Court: Proceed.

A. The same answer applies. The examiner dictated this letter when there, would be sometime only Mr. Ross and Mr. A. E. Lewis and myself there, would dictate the letter as coming from all directors of the Liberty National Bank and then after that to take that letter around and have it signed by all the directors as if they were present at that meeting, and the letter was signed in that manner and mailed to the Comptroller of the Currency.

Q. These national bank examiners knew at that time there was no formal meeting of the directors held, didn't they? A. They did.

Q. Now, Mr. Lewis, I will ask you whether or not any stock of the Liberty National Bank was issued to Mr. Ross in August, 1923, just about the time or immediately prior to the time that the minutes of the meetings here showing his re election as a director of the bank?

A. Yes sir, the records of the bank, the stockbook certificate shows 10 shares were issued to Mr. Ross in August, I don't recall the exact date, but ten shares were issued to him, and I think his receipt shows on the book, as his having received that ten shares of stock.

Q. Now, Mr. Lewis, I will ask you if you entered any of these, wrote out any of these minutes of these directors meetings that have been introduced in evidence by the government here? A. No sir, I did not.

Q. Did you direct anybody to make these entries in here?

A. Yes sir, I told Mr. Lamprich to write up the minutes of the meetings in the regular manner. I didn't direct any particular manner that they be written up. However, I told him to write up a directors meeting as of a certain date.

Q. That is the only directions you gave him? A. It is.

Q. How did he then proceed to write up these minutes?

A. The minutes are almost duplicate in form except the dates. He would use the prior meeting except the date in most instances, except there was sometimes some particular thing he wanted in there; that was the usual custom.

Q And how long had that custom prevailed in the bank?

A. I would say some seven or eight years.

Q. That wasn't a new custom in 1922 and 1923?

A. It was not.

Q. I will ask you, Mr. Lewis, if you had any intention in any connection you had in the entries in the minute book of the Liberty National Bank concerning which exhibits have been introduced here by the government, of defrauding the Liberty National Bank or anybody connected with it or any other person?

A. No sir, no such intention.

Q. Did you have any intention of deceiving any officer of the Liberty National Bank or the Comptroller of the Currency or any agent or examiner appointed by the Comptroller of the Currency to examine into the affairs of the Liberty National Bank? A. I did not.

Q. So far as the reports of the Comptroller of the Currency that have been introduced in evidence in this case, so far as you are concerned was there any intention in your mind or heart at that time or any other time to defraud the Liberty National Bank or any other person or corporation?

A. There was not.

Q. Or to deceive the officers of the Liberty National Bank or the Comptroller of the Currency or any agent or examiner appointed by the Comptroller to examine into the affairs of the Liberty National Bank?

A. No sir, the reports speak the truth.

Q. Mr. Lewis, I think I asked you this question but I want to be sure about it. Did the depositors of the Liberty National Bank lose anything?

A. No sir, no person ever lost a cent as a depositor of the Liberty National Bank.

Q. I will ask you this further question. If Mr. Kramer or Mr. Grois or Mr. Ross or Mr. Lamprich or Mr. Garret, who are connected with the Liberty National Bank have been prosecuted for the things growing out of the Liberty National Bank? A. They have not.

Mr. Dodds: We admit they have not, but we think counsel's question is highly improper.

Mr. Davidson: It is competent, your honor, as affecting their credibility alone.

Mr. Dodds: Are you establishing their credibility is excellent to show they have not been?

Mr. Davidson: No, to show their interest.

Mr. Dodds: We will let it go in for that purpose.

The Court: Very well, proceed.

Q. Mr. Lewis, at the time of this Ballard and Koons transaction in December, 1922, you were familiar with the value of the stocks that were involved in those transactions were you not?

A. I was. All the companies did business with the bank, and I knew personally the officers and directors of all of the companies.

Q. What was the fair market value of the stocks involved in the Koons transaction?

A. It was a little in excess of the amount of his note.

Q. What was the fair market value of the stock involved in the Ballard transaction?

A. It was also a little in excess of the amount of his note.

The Court: Cross examine.

Mr. Davidson: I think that is all, if your honor please. If there is anything else, we will ask your honor to let us go into it.

Cross Examination by Mr. Dodds

Q. Witness, the money that you testified you owed up at Kansas City, was that money, were you speaking of money owed by the bank at Kansas City or money owed by you and your brother as individuals?

A. Money owed by my brother and myself as individuals.

Q And what amount did you say that approximated?

A. I believe it was $590,000.00 approximately.

Q. And you stated that the proceeds of these various loans in which you exchanged notes with parties who have testified here were used to pay the indebtedness up at Kansas City to a large extent?

A. I stated that a portion of it was.

Q. A portion of it was so used. The indebtedness up at Kansas City was liquidated to quite an extent during that period was it not?

A. Reduced to approximately $190,000.00.

Q. Yes, or about three or four hundred thousand dollars was paid on it apparently. Now, then, you used money that came out of the Liberty National Bank to pay your personal obligations up at Kansas City; that is what it amounted to, wasn't it? A. This was money—

Mr. Williams: Wait a minute that is calling for a conclusion. I object to that; that is not proper cross-examination.

The Court: Let him answer.

Mr. Dodds: I am asking if that is what he says.

Mr. Williams: Exception.

A. Money that you refer to was money which we borrowed from the makers of those notes.

Q. Yes; it came out of your bank, though, the Liberty National?

A. Yes, they borrowed the money from the Liberty National Bank and we in turn borrowed it from them.

Q. From them, and it went up to Kansas City to pay your personal obligations?

A. A portion of it did.

Q. And other of it went to New York and St. Louis and other places, for the same purposes, did it not?

A. A portion of it went to those other places, Kansas City, New York and St. Louis.

Q. Now, referring, Witness, to the Mitchell transaction, I understood you to say here this morning on direct examination that Mr. Kittess came in, gave his note to be discounted to pay the note that Mr. Mitchell had given to you and that you in turn had endorsed it to the bank; is that correct?

A. I don't remember whether this particular note was made to me and I endorsed it to the bank or not; it perhaps was.

Q. Yes.

A. In fact, I believe that it was; I know that the original notes were all made to me and endorsed over to the bank.

Q. Endorsed to the bank?

A. Yes, sir, and this one may have been; in fact, I am reasonably certain that it was.

Q. They were notes on which you got the money by discounting them at your bank?

A. Originally, I had received the money in 1921, yes, sir.

Q. Now, you said that Mr. Kittess came in and paid that note up by giving you his note, knowingly, and that then when the note was paid to the bank the note running from Mitchell to you and endorsed by you to the bank, that after it was thus paid you did not return it to Mr. Mitchell, but you held it as collateral security to the payment of Mr. Kittess's note to the bank; is that correct?

A. That is correct.

Q. Will you explain to me, as a banker, how you held a note that was fully paid up and all the liability on it dis-

charged, in your bank as collateral security to someone's else note? Nobody owed anything on that Mitchell note, did they, after it was paid?

A. Mr. Mitchell owed that; it was the understanding we were to hold this note as collateral to Mr. Kittess' note; we were to hold the Mitchell note as collateral to Mr. Kittess' note.

Q. The books of the banks show that under date of December 19, 1922, Mr. Mitchell's note for $13,600, owned by the bank, was completely paid, do they not?

A. It was marked off of the book and transfered from the loans and discounts to the collateral department.

Q. That is marked paid, isn't it, on that date?

A. It is marked off the book; it does not say it is paid. Necessarily, there would be the same record shown as if you would send a note to Kansas City; it would be marked from the records.

Q. You said this morning it was paid; you said Mr. Kittess gave his note for the purpose of paying it.

A. It was paid as pertains to the loans and discounts. It was marked from those records, but it was carried as collateral on Mr. Kittess' note.

Q. Yes.

A. That was the understanding; it was to be done.

Q. Mr. Kittess' note paid Mr. Mitchell's note, and Mr. Mitchell's note secured Mr. Kittess' note?

A. Mr. Mitchell's note, which was marked off of the records of the bank, secured—Mr. Mitchell's obligations to the bank were not discharged, as far as an obligation being canceled and the mortgage released. That was still held.

Q. Did you enter up that Mitchell note on any collateral register or anything of that kind in the bank?

A. I did not make the entries of that in the bank.

Q. Now, isn't the truth of the matter this, Mr. Lewis: That that note for $13,600, you were an endorser on, and you were liable to your bank for it, and because you were an endorser on it and liable to your bank you wanted to get it out of the way and get Mr. Kittess' note directly to the bank, which you would not have to endorse, and upon which you would not be liable? Now, that is a plain statement of the fact, isn't it?

A. That statement is false in practically every detail.

Q. Now, what detail is it false?

A. In just everything you said on there.

Q. You were endorser on the note?

A. I was an endorser on the note, but that was not any reason——

Q. So was your brother, Allie E. Lewis, wasn't he?

A. I don't recall; he may have been; I don't recall that he was.

Q. Where is the note now?

A. It was left in the Liberty National Bank when it was sold to the Security National Bank.

Q. Was it still an obligation due to the Liberty National Bank?

A. It was a collateral held by the Liberty National Bank on which they could bring suit, if necessary, either on that or on the Kittess note, or on both, for that matter.

Q. They could bring suit on it, even though the Kittess note paid it up in full? A. Yes, sir.

Q. All right; that is all right. Now, I understand you to say, Mr. Lewis, here, that in connection with the deal with Mr. Ballard and Mr. Koons on the stock, that you were present and knew all about the matter, and that the purpose of making that deal was to enable your brother to loan some stock to Mr. Ballard and to Mr. Koons, and having loaned it to them, in a way where he could get it back if he wanted to, or when he wanted to, to put down in his income tax return that he had sold the stock and claimed the depreciation on it; now, is that the truth?

A. Yes, sir, that was one of his objects; so he could get a deduction from his income tax at that time.

Q. You know, of course, don't you, Mr. Lewis, that that would be an absolute wrong and fraud on the Government, on the income tax matter, don't you?

Mr. Williams: Well, I object; that is incompetent, irrelevant and immaterial.

Mr. Dodds: I don't think so.

The Court: Let him answer.

Mr. Williams: Exception.

Q. Yes. You know that, don't you; that it would be a fake sale?

A. If it was a straight sale on there, it might be considered as a fake sale, but the stock had reduced in value so that he could have claimed a loss on there just the same in some other manner.

Q. Why didn't he do it? Why did he go to all the bother of this kind of a transaction?

A. For the reason he also wanted to raise some cash at that particular time.

Q. That was the real reason, wasn't it? He wanted to raise some cash?

A. There was two reasons, as I stated; one on account of the income tax and the other on account of the cash.

Q. On the Simon Knoten deal, stock that was sold to Simon Knoten was worse than worthless at the time it was sold to him, wasn't it as a matter of fact? A. It was not.

Q. Isn't it true that it was a liability rather than an asset, as it turned out?

A. It later turned out that—it wasn't a liability—it later turned out——

Q. It would have been if the bank had continued, wouldn't it? A. I don't know as to that.

Q. The bank was insolvent at the time you sold him the stock wasn't it? A. No, sir, it was not.

Q. You say that it was perfectly solvent at that time?

A. It was.

Q. You state that you loaned Simon Knoten, this grocer that was on the stand, the money to buy his real property with. You stated that on the stand here this morning?

A. Yes, sir.

Q. You did not mean that you loaned it to him, did you?

A. The bank loaned it to him.

Q. The bank loaned it to him; you never loaned him a nickel, did you? A. Not personally, I did not.

Q. Not personally? A. No, sir.

Q. But you eventually got back, indirectly, what the bank loaned to him.

A. Mr. Knoten paid all of his obligations; everything he owed the bank.

Q. I say you got back for your own use all that the bank loaned to Mr. Knoten? A. Got back for my own use?

Q. It came back to you, individually, didn't it?

A. No, sir, Mr. Knoten paid the obligation which he owed the bank to the bank.

Q. You got the money from Knoten for the stock?

A. No, sir, I did not get the money from Knoten for the stock; my brother sold him some stock and received payment for the stock.

Q. The stock turned out to be worthless?

A. The stock later turned out to be worthless; it was not worthless at the time.

Q. Yes, and you stated here, Mr. Lewis, on direct examination, that you and your brother turned in your houses in order to protect the depositors of the Liberty National Bank. Now, you did not turn in your houses at all until long after the Liberty National Bank had been taken over by the Security, did you?

A. It was one week after that time.

Q. After——

A. At the meeting which I told about this morning on direct examination.

Q. Well, how did you turn in your houses to protect the depositors of the Liberty National Bank when there was not any such thing and it had been completely bought up by another bank?

A. Just in the manner that I stated this morning; that Mr. Griffey, the National Bank Examiner, said "We have another busted bank in town." He said that the Security National Bank, unless we turned these homes in, could not open up, and the depositors of the old Liberty National Bank, which we formerly owned, would be the losers, as well as the others.

Q. Through the Security National?

A. Yes. They were in the Security National Bank, and asked us to turn these homes in and we did.

Q. Now, just a moment. And you did deed the homes over, as shown by the deeds here? A. We did.

Q. You did not do that except under the utmost compulsion from those people, did you?

A. There was a lot of argument there that night.

Q. You did not want to do it under any circumstances, did you?

A. We told them that night we did not want to do it for this reason: We thought that the homesteads, if turned in, should be turned in and divided equally among all of our creditors, and not prefer the Security National Bank. We thought it should be distributed among all of our creditors, instead of just among——

Q. You got $135,000 worth of paper out of your own bank as consideration for turning in the homestead, didn't you? A. Paper which the examiner had.

Q. Just answer: You got that, didn't you?

A. Yes, sir, we received that paper.

Q. Now, you had your choice of approximately $600,000 of the paper of the Liberty National Bank to pick any of it you wanted, as consideration for turning in your home, didn't you?

A. There was considerable paper there; I don't remember whether that was the amount or not.

Q. It was $583,000, to be exact, wasn't it?

A. I don't remember the amount.

Q. $683,000.00, I mean to say?

A. I don't remember the amount. I know it was some notes out of the ones which were turned over.

Q. And you were allowed your choice of any of that paper which you had just sold the week before for face value?

A. We were allowed our choice of any paper which they marked off as worthless paper.

Q. You had charged that off, that $683,000.00, you sold the paper?

A. If it is $683,000.00 was included in that worthless paper, the answer would be yes.

Q. You had your choice of it, didn't you?

A. Of some amount, I don't know that that was the amount.

Q. Now, you took when you exercised your choice, this paper didn't you, you took a note of J. E. Bumpuss in the sum of $1,572.00?

A. There was a note of Bumpuss, that perhaps was the amount.

Q. You took Robert M. Bailey's note in the sum of $22,800.00? A. No, sir, never heard of that note.

Q. Is it Gaylor? You know the paper I mean? A. Gaylor.

Q. Yes. A. What was the amount of it?

Q. $22,800.00. A. Yes, sir.

Q. That was correct?

A. That amount is approximately correct.

Q. And you took H. A. Noble's paper in the sum of $24,900.00? A. Yes, sir, approximately that amount.

Q. And you took Henry Leibert's note for $600.00?

A. Yes, sir, that was the amount of that note.

Q. Then you took these other notes. E. E. Lewis' for $3,700.00? A. What was that?

Q. E. E. Lewis, or E. G., is it? A. E. G.

Q. $3,700.00? A. Yes, sir.

Q. E. G. Lewis for $18,250.00; E. O. Lewis for $23,991.00; E. H. Lewis for $24,800.00; E. H. Lewis for $4,559.00; O. H. Lewis for $3,085.00; you took those amounts of your own family paper, $80,000.00 of it in there, didn't you?

A. Yes, sir, O. H. Lewis is a cousin of ours.

Q. Those are all of the same tribe, are they not, all Lewises the same family?

A. E. G., E. O. and G. H. Lewis are brothers of ours; O. H. Lewis is a cousin.

Q. In addition to that, you picked up a $2,800.00 note of Pearl Schafer, didn't you?

A. I believe that was the amount.

Q. Pearl Schafer was the nurse up at Allie Lewis' house, wasn't she? A. She was.

Q. And she lost some $5,000.00, didn't she, in this transaction?

Mr. Williams: I object to that as not proper cross examination.

The Court: Yes.

Q. I withdraw that question. You had Noble's note for $24,900.00. Now, if that paper was bad, Mr. Lewis, that you

took, how did it come that you turned it over to the Security National Bank a week before that for its face value?

A. The Liberty National Bank was sold to the Security National Bank and they were, the stockholders were not to get back anything for the stock which they sold to them until all the notes were paid and they determined if there was any loss.

Q. You are not answering my question directly. I say if you say this paper, it hadn't changed in character at all as to being good or bad between the time that you sold it to them for par value and the time you got it back had it? It was just the same a week later as it was when you sold it to the Security?

A. Presumably the same but the paper wasn't sold to them as assets of the bank. While it went up as par value, they also received the capital and surplus and undivided profits to the amount of $357,000.00 odd thousand dollars to take care of their losses.

Q. You know regardless of that matter and in addition to getting back the $135,000.00—the gentlemen there in the Security National Bank had to put up $600,000.00 to cover the worthless paper you sold them the week before?

A. I heard they had to make up an amount in there on some paper which the examiner charged off.

Q. You knew they had to put up $600,000.00 to cover that loss?

A. I don't know as that was the amount of the paper that was charged off.

Q. Just a minute.

Mr. Davidson: If the court please, I would like for the witness to have an opportunity to answer the questions.

The Court: I think he has answered it. Get along.

Q. You know, witness, they had to put up $600,000.00 to cover the loss incurred by taking over the assets of the Liberty National Bank, you know that, don't you?

A. No, sir, I don't know that. I know that they were called on to put up some amount, but as to what the amount was, I don't know.

Q. Now, Mr. Lewis, in the matter of John Kramer, you state now when Mr. Kramer says that he executed his note for $30,000.00 in order to enable you to take paper *paper* out of the bank that was in excess of the amount that the law allowed you to borrow, when he states that is what you told him, that he doesn't state the facts as they were?

A. No, sir Mr. Kramer is mistaken in that matter. We had no excess paper in the bank.

Q. I agree you had no excess paper but you didn't tell him that? A. We didn't tell him that.

Q. You just told him, "John, come in, we want to borrow $30,000.00," that was all there was to it?

A. We told him we wanted to borrow $30,000.00, and he said he didn't have the money to loan at that time, and we asked him to execute his note to the bank for $30,000.00 and loan us the money.

Q. You heard John say you told him you would take care of that paper, and he would never hear of it again?

A. I believe he said that.

Q. Isn't that what you told him?

A. No, sir, we told him this, any time he became dissatisfied with that relationship if he would bring the note back my brother and myself give him, we would pay that note and he in turn could pay his note to the bank.

Q. You never did call on him when that paper became due? A. No, sir.

Q. And you sold John's $30,000.00 worth of paper at 2:00 o'clock in the morning with the other assets of the bank, to the Security National Bank?

A. This paper was sold with the other assets of the Liberty National Bank.

Q You didn't tell them anything about the agreement that you had with John that he was to have the right to come and get his paper out at any time and it really wasn't his obligation at all?

A. We told them nothing of the kind, because that wasn't the fact.

Q. You say now you told him he could come and take the paper out?

A. We told him at any time he wanted, if he would bring our note in, we would pay it and he could pay his. We never told the Security National Bank or anybody else it was not an obligation of Mr. Kramer's.

Q. Now, you stated here—you did as a matter of fact turn that $30,000.00 note concerning which you had made John different promises, you did make him, over to the Security Bank and when John was lying asleep up there in a mile of the bank and didn't know a thing about it?

A. I don't know whether John was asleep or a thing about it.

Q. You didn't try to find him, did you?

A. I don't know whether we did or not.

Q. He was a director of your bank whose $30,000.00 note was being turned over to another bank where you had all the proceeds of the note.

A. The records show Mr. Kramer received the proceeds of that note and he gave it to me in three different checks.

Q. Yes. I think you stated this morning he made the note and then afterwards he gave you checks for it and you got the money on it?

A. I got the money on the checks, yes, sir.

Q. Now, will you tell me if what you said this morning is the case, he made the note and then afterwards you got the money from him on checks how it happens that the note bears date of April 8, 1922, and the checks bear date of April 7, the day before?

A. No, sir, I have no independent recollection of why that date is one day before, one the 7th and the other the 8th. I don't know whether it was a mistake of the stenographer or why it was. I know the note was executed in the regular manner.

Q. Have you any independent recollection of this?

Mr. Davidson: If your honor please, the witnesses in this case are under the rule, and I notice a bunch of them listening there at the door. I wish your honor would instruct the marshal to direct them to stay away from the door.

The Court: I have instructed them to remain without the hearing of the court.

Q. You have no independent recollection whatever of how the checks happen to be dated the day before the note was made, and yet you say here this morning that John borrowed the money from the bank and then thereafter he loaned it to you?

A. The papers were all made out, executed at approximately the same time.

Q. It was all one transaction?

A. It was right there at one time, approximately the same time; it was the same day, probably in the same hour.

Q. I notice these notes, one is for $15,000.00, one for $5,000.00 and one for $10,000.00 checks aggregating $30,000.00; will you tell me, Mr. Lewis, why if you were getting that $30,000.00 from Mr. Kramer and it was a perfectly open and above board transaction you didn't make one check for $30,000.00? Why did you split it up into three checks in different amounts and date the check the day before?

A. I have answered the question relative to date. The checks, as to splitting up of the checks, I don't know why that was done. Mr. Kramer testified before he believed I asked him to separate that into three checks. I have no independent

recollection of that. I know from the books of the bank it was used on three days.

Q. Just a moment. I will ask you questions here. Can you tell the jury any sane, sensible reason as a banker why, when you were getting that $30,000.00 you split it up into three checks if it wasn't your purpose to conceal the single item of $30,000.00 on the books of the bank so that the bank examiner wouldn't readily notice you had gotten the proceeds of that Kramer note?

A. I don't know why that amount was divided into three separate amounts.

Q. You don't know of a single reason why it was done?

A. I don't know why it was done, no, sir. I can think of several reasons why it might be done. I can tell you why it was likely done.

Q. All right, tell us why it was likely done.

A. They were used on three separate days; I don't know whether that was the reason it was done or not.

Q. For different matters?

A. Yes, sir, they were used in different matters. I recall that now a portion of that was paid to the Liberty National Bank and a portion to the Security National Bank.

Q. Then you had it in your mind when you were getting them from John to split them up so you could conveniently use the checks for different amounts?

A. I don't know why.

Q. If you didn't have it in your mind you would not have done the splitting then, would you, you would have waited and written your own check for the right amount?

A. I don't know why it was done.

Q. As to these two McDonalds that you borrowed money for the purpose of Sinclair stock, Mr. Lewis, the one McDonald, Jim, was a fellow up there interested with you somewhat in a string of horses?

A. He had no interest in any string of horses. I owned the horses outright.

Q. You had no interest with him?

A. I beg your pardon. At one time I had a half interest in all his horses in there and my horses he had no interest in them.

Q. When you were making the loan to him up there, you were depending on the value of those Sinclair stocks, weren't you, and not on the other elements in it?

A. Yes, sir, the full amount of the note was used to purchase stocks.

Q. It was just a method by which you got money out of your bank to buy Sinclair stocks for yourself, wasn't it?

A. The money was used to buy Sinclair stocks, the full amount of the money.

Q. If the stocks went up, you could take them and have them and if they went down you could stick Jim with them, isn't that a fact?

A. That wasn't the intention. It could have been the fact or could not have been the fact.

Q. That is what happened, Jim got stuck?

A. The stock went down and Mr. McDonald had to pay the note.

Q. You had it arranged so you could get those stocks at any time you wanted them?

A. By paying the amount of the note, I could.

Q. Now Hugh McDonald, the other brother that had the note in there in a large amount, he had a news route and ran a little water wagon there in Tulsa, didn't he?

A. He had a water company there in Tulsa.

Q. Distributed drinking water and a news route?

A. Yes, he owned some wells out there and sold bottled water.

Q. Who got the dividends on those Sinclair stocks while they were in the bank?

A. They were paid direct to the McDonalds and they in turn endorsed them to the Liberty National Bank and they were applied on the note, every cent of them.

Q. Now, as to the Bohnefeld deal I want you to tell us just in short, and I am very near the end here, how you got the money out of Mr. Bohnefeld's account. Mr. Bohnefeld made his note to the bank, you testified you placed the money to his account, how did it come out of his account?

A. It was drawn from his account by check.

Q. By his check?

A. I think it was by his check or charge slip. My recollection is by his check.

Q. You wouldn't just go and charge his account so much and put it in your pocket?

A. No, not unless he instructed us to, and I don't think that was done. If you can show me the checks, I can tell whether Mr. Bohnefeld signed them or I signed them.

Q. You wouldn't do that without a written order, go and take the money out of the man's account?

A. If a man instructs us to charge his account for a certain purpose that was sometimes done. I don't know that that is what was done in this respect at all. In fact, my recollection is he gave checks for those amounts.

Q. You would show on the bank statement that you had charged his account if you had done so?

A. The bank statement would show the checks charged to the account. It wouldn't show whether the check was signed by him or whether it was signed by somebody else.

Q. He would not be able to tell what had happened. Would you send the debit slip with his statement to him, his cancelled checks?

A. If the check was charged to the account he would get that with his cancelled vouchers regardless of whether he signed it or somebody else signed it.

Q. He would get it with his cancelled checks? A. Yes, sir.

Q. Now, I want to ask you these questions. You heard Mr. Simon Knoten testify here to the effect—and you heard James McDonald and heard Powell testify to the effect that he instructed you when you told him that the oil deal wasn't going through that he was to be interested in with you, to credit that amount back and pay his note with it right there, didn't you?

A. I heard that statement. He says he made that statement to A. E. Lewis.

Q. Were you there when he was talking to A. E. about it?

A. I knew nothing about that occasion whatever. I know the note was in there and Mr. Powell wrote us a letter later and sent us a statement two or three months after this conversation took place.

Q. You heard Dr. E. Forrest Hayden state you told him he would never be bothered with his note at all, and you would take care of it? A. I heard his testimony to that effect.

Q. Was that correct?

A. No, sir, it was the same about the others.

Q. Never mind, you did tell him that or you didn't?

A. We didn't tell him that.

Q. Yes, you heard William O. Bohnefeld state that you said that he would not be troubled with his note there in any way, that he was making; did you tell him that or not?

A. No, sir, we did not.

Q. You heard Dr. Houser say that you told him when he made his note that he would not be held to pay it; did you tell him that or not? A. No, sir.

Q. In connection with the matter of Mason Kittess, you heard Mason Kittess state here that you agreed that his note was to be used only as collateral?

A. I heard him make that statement.

Q. And for no other purpose?

A. I heard him make that statement; he is wrong in that.

Q. You did not tell him that? A. No, sir.

Q. He knew that the agreement between you was that

you were to take his note right out and cash it and immediately pay off the obligation that you had endorsed there?

A. I don't know whether he knew anything about my endorsement on any obligation or not. I told you I didn't know for certain whether I was endorser on that or not.

Q. Well, all right; never mind. You gave all of these notes to these people that helped you out and that you have been testifying here about, you gave them all notes—practically all of them, didn't you?

A. Yes, sir, where we borrowed money from them we gave them our promissory note, just the same as a person would borrow money from any place and issue a promissory note for it.

Q. You intended to pay those notes, didn't you?

A. Absolutely.

Q. You went out after the bank closed and went into bankruptcy? A. Bankruptcy proceedings pending now.

Q. Been pending how long; when did it start?

A. We did not start bankruptcy proceedings. They were filed against us. We tried to keep it out.

Q. And you had assets in bankrupcty—listed assets in bankruptcy, of three or four thousand dollars, or five, between you?

A. I don't know what the assets were; there was a lot of securities——

Q. You don't remember?

A. I don't remember what that was; I don't have that before me.

Q. It was less than seven thousand between you, wasn't it?

A. Perhaps on the unsecured property, but there are properties pledged as security which would amount to a whole lot more than that.

Q. And open assets to the amount of less than ten thousand, didn't you?

A. The assets which were not pledged as collateral.

Q. So that all these notes you gave are not worth a continental are they? A. At the present time, they are not good.

Q. In a little while you will be discharged in bankruptcy, and you won't owe anybody?

A. They brought bankruptcy proceedings against us against our will, and I presume they will go through with the bankruptcy proceedings.

The Court: Is that all?

Mr. Dodds: That is all.

The Court: Stand down.

Mr. Davidson: Just a moment, if your honor please.

Redirect Examination by Mr. Davidson.

Q. Mr. Lewis, I will ask you whether or not it is your intention, if you are ever able to pay, whether you are discharged in bankruptcy or not, whether you intend to pay these debts you have created? A. Absolutely.

Q. You will do it if you can? A. Yes, sir.

Q. Now, Mr. Lewis, I will ask you if you have your voucher checks, showing the payment of the money during 1923, to the—to the Exchange National Bank and the Commerce Trust Company of Kansas City and these other banks?

A. I have a portion of them; I did not keep all of them.

Q. Are those checks the ones here that have brought in this bunch?

A. Yes, sir, I have checks in the amount of about $135,000, made payable to the various banks, bearing their endorsements, during the year 1923, which were made to reduce the indebtedness of A. E. and myself.

Q. You have those checks here now? A. I have.

Mr. Davidson: I think that is all.

The Court: Stand down. Who will you have next?

J. P. O'MEARA

was called as a witness on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination by Mr. Davidson.

Q. Your name is J. P. O'Meara? A. J. P. O'Meara.

Q. Where do you live, Mr. O'Meara? A. Tulsa.

Q. What business are you engaged in?

A. I practice law.

Q How long have you been practicing law?

A. Since 1888.

Q. In November, 1923, did you represent A. E. Lewis and W. L. Lewis as attorney in the matter of turning over their homes to the Security National Bank? A. Yes, sir.

Q. Did you have any conversation on that night with Mr. Griffey, the National Bank Examiner, in regard to the matter? A. Yes, sir.

Q. I will ask you to tell the court and jury just what transpired and what Mr. Griffey said about that matter, and where it was and who was there.

Mr. Dodds: I can't see how that could be admissible in this case, your honor; I don't care, except as a matter of time. I won't object to it on any other grounds.

The Court: It is merely hearsay.

Mr. Davidson: If your honor please, it goes to this point: To show that they turned over their homes in to the bank on Mr. Griffey's representation that he would not let the Security National Bank open up next morning unless they did turn their homes in.

The Court: Suppose he did. I suppose, if so, he had good reasons for it.

Mr. Davidson: Why, the reason, if your honor please, was they were still doing all they could to protect the Liberty National Bank and the depositors.

The Court: Well, they did turn in their homes.

Mr. Davidson: Yes, sir.

The Court: But as to whether what this man said would be competent or not, it is purely hearsay; it is not binding on anybody but him, and he is here. Let him answer. We will get through quicker.

Mr. Davidson: All right.

Q. Just tell what was said there and what took place.

A. Well, the first conversation——

The Court: Well, now, you can answer whether he told these gentlemen if they did not turn their homes in the bank would not open up next morning.

A. He said that, yes, sir.

The Court: All right.

By Mr. Davidson:

Q. Did you have any further conversation with him about the matter?

A. That same conversation was repeated at the time the deeds were being made, and then after Mr. Roberts arrived the next morning.

Q. Who was Mr. Roberts?

A. Mr. Roberts was also a bank examiner.

Q. He is the Chief National Bank Examiner of the tenth

A. I don't know his title, but I understood he was some superior.

Mr. Dodds: He is; I will say for counsel's information he is Chief National Bank Examiner of the Tenth Federal Reserve District.

The Court: That is true

By Mr. Davidson:

Q. I will ask you if Mr. Griffey made any statement to you in that conversation about his having examined the books of the Liberty National Bank in August, 1923, and again immediately following the time that the Security National Bank took over the Liberty National Bank, with reference to whether or not he found any false entries in the books of the bank or the Comptroller of the Currency?

A. Yes, sir, he did, in answer to my question.

Q. Well, what was your question, and what was his answer?

A. When they were insisting that the houses be turned over, I said that I did not know whether there had been any violation of law or whether it was claimed that there had been any violation of law, and that if there was any prospect of an indictment or any prosecutions, that I would tell the boys to keep their houses to fight with, but I said, Mr. Griffey, you cannot bind the Government and we don't expect you to, but you have examined those books, as I understand in August and also in November. Now, I just take your word as to whether or not you found out anything, any false entries or anything that was crooked in them, and he said, "So far as I know there is nothing of that kind."

Q. And he told you in that same conversation, did he not, that the only thing wrong he found was the boys owed too much money, personally? A. Yes.

Mr. Dodds: There is a lot of leading questions here on direct examination.

Mr. Davidson: That is all. Take the witness.

The Court: Any questions?

Mr. Davidson: Take the witness.

Cross Examination by Mr. Dodds.

Q. Mr. O'Meara, you were attorney for the Lewises in the bankruptcy proceedings?

A. We fixed up their schedule for them—that is, I did not.

Q. That is all. Your firm did?

A. My firm did; I do not do any bankruptcy work.

The Court: Stand down. Who will you have next?

Mr. Davidson: Will you bear with us just a moment, if your honor please. I want to recall Mr. Lewis just for one question.

W. L. LEWIS

was recalled as a witness on behalf of the defendants, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Davidson.

Q. Mr. Lewis, with reference to these meetings of the board of directors that have been shown by the minutes that have been entered as exhibits by the Government, were meetings of the directors held on those occasions, or not?

A. They were all held, yes, sir, in the same manner that the ones which I told you a while ago. They were informal meetings in which the affairs were discussed and then written up in accordance with the wishes of the directors, and Mr. Ross signed them.

Mr. Davidson: You may ask him.

Cross Examination by Mr. Dodds.

Q. Mr. Lewis, I show you page 23 of the minute book. Is that A. E. Ross' signature?

A. I believe that is signed by R. C. Lamprich. I don't believe that is Mr. Ross' signature.

Q. I show you page 25; is that signed by Mr. Ross?

A. I make the same answer to that question.

Q. Page 27; that was not signed by Mr. Ross, either was it? A. The same answer to that question.

Q. Page 29 was not signed by Mr. Ross?

A. Same answer to that question.

Q Page 33 was, was it not? A. It was.

Q. From then on. Now, Mr. Lewis, did that meeting of August—Just for example, here, did this meeting of August 20—purported meeting of August 23, 1923, signed by you and your brother, at which it is stated that the motion was made by John T. Kramer and granted by you that Mr. Ross be re-elected a director; did that meeting ever take place?

A. I have no independent recollection of that meeting.

Q. Not a particle of recollection of it of any kind, have you? A. No, sir, I don't recall.

Q. Yes, you signed the minutes, though, and so did your brother, didn't you, of that meeting?

A. Yes, sir, that is my signature and his signature.

Q. Yes. Now, have you any recollection, Mr. Lewis, of the minutes—of the expense book of the bank ever being examined at a meeting of the board of directors of the bank in the year 1923?

A. No further than that we discussed it with Mr. Ross, as to the condition of the bank and the expenses and the general conditions of the bank.

Q. Of the bank? A. Yes, sir.

Q. But the expense book, as a book, was never examined—wait a minute—the expense book, as a book, was never examined and approved at a board of directors' meeting, was it?

A. I don't recall that the expense book was ever gone through in a formal manner; it was discussed and the amount of expenses discussed and the profits that the bank was making.

Q. Just a moment. You heard Mr. John T. Kramer testify here he never saw the expense book during 1923; you don't question that, do you?

A. I heard him make that statement.

Q. You do not question the truth of that at all, do you?

A. I don't know whether he saw it or not.

Q. You heard Mr. Ross testify he had not seen the expense book of the bank during 1923?

A. I don't remember whether they saw it or not. If either one of them had asked for it, I am sure they could have seen it. I don't remember whether they saw it or not.

Q. You don't remember of either one of them having looked at it that year?

A. I don't recall them having gone through it.

Q. You heard Mr. Greis testify he never attended any meetings of the board of directors and never saw the expense book of the bank during 1923?

A. Mr. Greis said he did not recall whether he had that year or not.

Q. He said he did not during 1923, for your information. I ask you whether or not you remember Mr. Greis having seen or examined the expense book of the bank during 1923?

A. I don't remember of his having examined the expense book.

Q. You could not say he did, at any time during that year?

A. I could not say he did.

Q. Was there ever a report made during the year 1923 by the discount committee of loans, by number, setting out the loans of the previous month?

A. Mr. Ross and my brother and myself consisted that discount committee and we talked those things over. As far as just stating No. 22,055, or any other particular number, I don't know that they were discussed in that way.

Q. You heard Mr. Ross say here he did not have a thing to do with the loans of that bank during 1923, except his own loans, didn't you?

A. No, sir. I didn't hear him make that statement.

Q. You did not?

A. He said he knew all the loans that went in the bank.

Q. What did you say?

A. I did not hear him make that statement. I believe his statement was he knew all the loans that were in the bank.

Q. During 1923?

A. Yes, sir, that is my recollection of his testimony.

Q. Now, were the loans during the year 1923 ever formally approved at a board of directors' meeting?

A. We had no formal directors' meeting where parliamentary practice was followed and the rules followed. We discussed it with Mr. Ross——

Q. As to the purported stockholders' meeting on January 29, 1923, were you present at such a meeting?

A. Yes, sir, I was there.

Q. You testified down at Hugo you could not remember a thing about it, didn't you?

A. I don't recall whether I testified down at Hugo I didn't remember a thing about it or not.

Q Didn't you say down at Hugo you had no independent recollection of there having been any stockholders' meeting in 1923, when the matter was not in issue?

A. I may have said I had no independent recollection. Since that time I have gone through the records of the bank and dug out the proxies and other matters, and we did have that meeting, and it was held in an informal manner.

Q. Just tell me somebody that was there at that meeting besides you and your brother.

A. Mr. Ross and the proxies were there for several of the others.

Q You and your brother and Mr. Ross are all the people you can remember?

A. That is all that I remember.

Q. You and your brother and Mr. Ross are all that you an remember of having been at stockholders' meeting?

A. That is all I remember having been there.

The Court: Is that all.

By Mr. Dodds:

Q You heard Mr. Ross say he was not there at such a meeting didn't you?

A. I believe Mr. Ross' testimony was he did not remember whether he was there or not.

Q. That he did not remember of having been there.

A. Yes, sir.

Q. You heard Mr. Kramer say positively he was not there, didn't you? A. I believe that is his statement.

Q. You know that the book here states positively that he was?

A. I don't know whether it says he was there, or there with a proxy.

Q. Now, those who were there by proxy are set out, Charles Stunkard, C. C. Simmons, Sara B. Mitchell, Mabel M. Mitchell and J. H. Powers.

Mr. Dodds: That is all.

Redirect Examination by Mr. Davidson.

Q. Mr. Lewis, all of those proxies that have been offered in evidence were present there, were they not?

A. The proxies were present, yes, sir.

Q. You were there and Mr. A. E. Lewis was there and Mr. E. A. Ross was there? A. Yes, sir.

Q. And that represented probably about eighty or ninety per cent of the stock of the bank, didn't it?

A. That is approximately correct.

Mr. Davidson: That is all.

Cross Examination by Mr. Dodds.

Q. You heard Mr. Ross state he complained to you because no directors' meetings or stockholders' meetings were being held, at several times, and that he remembered once specifically of complaining to you to that effect. I ask you whether his answer was true?

A. He did not make that statement. He said he complained to A. E. Lewis.

Q. Well, do you know——

A. I did not hear—never heard him make any complaint of any kind. The first I ever heard of it was when he testified to that effect.

Q. You said he was acting as a member of the discount committee. A. He was a member of the discount committee.

Q. How does it come your cashier did not act on the discount committee, when your by-laws provided he should be a member of it?

A. Well, I don't know; it wasn't necessary to follow out all that. I will say this, however; at the time these by-laws were adopted, Mr. Ross was cashier of the bank.

Q. Yes. Was he acting cashier?

A. He was not an active cashier, no, sir. He was a cashier, however.

Q. Now, this young man Lamprich in here, what salary did you pay him down there?

A. Lamprich got five thousand a year, I believe it was.

Q. Yes, and he was nominally cashier, wasn't he?

A. He was cashier.

Q. Did he do a cashier's work in that bank, or was he a stenographer and clerk in it?

A. Why he did the work of the cashier; he did some stenographic work.

Q. Or make loans?

A. He made some few loans, but very, very few. The majority of the loans which he made were Liberty Bond loans. Practically no loans at all.

Q. Mostly what he did was stenography, wasn't it?

A. No, sir, he did very little stenographic work. We had two lady stenographers in the bank.

The Court: Is that all?

Mr. Dodds: That is all.

The Court: Stand down.

Mr. Davidson: The defendant rests, if your honor please.

The Court: Defendants rest. Any rebuttal?

Mr. Dodds: Call Mr. Griffey.

ORVILLE A. GRIFFEY

was called as a witness on behalf of the Government, in rebuttal, and having been previously duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Griffey, did you have occasion to examine the affairs of the Liberty National Bank of Tulsa during the year 1923, as bank examiner? A. Yes, sir.

Q. At such examinations, and as a result thereof, did you dictate letters to be sent to the Comptroller? A. Well, I——

Q. Is that your usual course?

Mr. Williams: I object to the question, as to wheth er it is usual.

Mr. Dodds: Counsel has asked him whether he usually did it, a number of times.

The Court: He asked whether he did or not.

Mr. Dodds: Well, did you do it?

A. Well, I don't remember whether I dictated the letter or not; there was a letter written.

Q. As a result of you or some of those under you, in examining the bank?

A. Yes, sir, as a result of our findings at the time the bank was examined.

Q. That letter to the Comptroller of the Currency was

based upon the findings. I will ask you whether or not it was also based on what the officers of the bank disclosed to you—told you?

A. Well, they did not—they did not tell us very much. It was just based on—principally on what we were guessing at.

Q As from the shape in which you found matters in the bank?

A. The shape in which we found the matters of the bank, but we could not establish that very definitely.

Q Yes, yes. Now, Mr. Griffey, did you have occasion to examine the affairs of the Liberty National Bank as a bank examiner just after it was turned over to the Security National Bank?

A. Yes, sir, I had—I was in conference where the assets of the Liberty National Bank were being reappraised by myself and some other gentlemen.

Q. Yes, and from your examination of the books and records of the Liberty National Bank, as a National Bank Examiner, including the information you obtained both before and after the consolidation I ask you whether or not the Liberty National Bank was insolvent at the time it was turned over to the Security National Bank?

Mr. Davidson: To which we object, if your honor please, for two reasons: One is that that is not the way to prove the insolvency of the bank and in the second place the solvency or insolvency of that bank is immaterial in this case.

The Court: Oh, I don't think that is material. All this has been—most of it has been collateral evidence to show intent.

Mr. Dodds: Well, based on the defendant's own statement, I just desire to show, if your honor please, that the bank was insolvent when it was turned over, and had been insolvent prior to that time, and that he knew it; it was not a good faith transaction with the Security bank.

The Court: Well, I can't help that.

Mr. Dodds: Well——

The Court: We have nothing to try here with the Security National Bank.

Mr. Dodds: No, I agree with that, and that was only in rebuttal of his statement. I think that is all, Mr. Griffey. Question the witness.

Mr. Davidson: Stand aside.

The Court: Stand down. Does the Government rest?

Mr. Dodds: I want just one more witness.

C. H. SEGER

was called as a witness on behalf of the Government, in rebuttal, and after being first duly sworn, testified as follows:

Direct Examination by Mr. Dodds.

Q. Mr. Seger, you are an officer of the Security National Bank of Tulsa? A. Yes, sir.

Q. And you were an officer of that bank at the time it took over the Liberty National Bank of Tulsa? A. Yes, sir.

Q. You were present at the meeting at the time the two banks merged? A. Yes, sir.

Q. And at subsequent meetings in connection with the affairs growing out of the merger? A. Yes, sir.

Q. I will ask you, Mr. Seger, whether you remember the incident of the two Lewises here turning over their homes to the Security National Bank after the merger? A. Yes, sir.

Q. And in what manner they obtained consideration from the Security National Bank for turning over their homes. I would say this: What paper were they allowed to choose from of the old Liberty National Bank as payment for their homes?

A. There was a list of approximately five hundred thousand dollars.

Q. Of paper of the Liberty National Bank? A. Yes, sir.

Q. And they took whatever they wanted of that, up to $135,000? A. Paper was selected from that list.

Q. Took their choice? A. They did.

Q. Were they hindered or hampered in any way in selecting that paper by you people?

A. Well, there was bickering back and forth as to what notes they would take, but the 135, I think it was, approximately, was finally decided upon, that that was what they would take.

Q. Now, Mr. Seger, how much money did the stockholders and others interested in your bank have to put up to cover the loss due to the bad paper that the Lewises put into your bank when they turned theirs over?

Mr. Davidson: To which the defendants object.

The Court: It is not very material, but I am going to allow him to answer.

Mr. Davidson: Exception.

Q. How much? A. $600,000.

Mr. Dodds: That is all. The Government rests.

The Court: Cross examine.

Mr. Davidson: Just a moment.

Cross Examination by Mr. Davidson.

Q. Mr. Seger, this $500,000 worth of paper that you mentioned was paper that the National Bank Examiner had required the Security National Bank to charge off as worthless, wasn't it?

A. No, that was paper that was taken out by the National Bank Examiner and members of the board of directors of the Security National Bank that we considered of little value. That is, we——

Q. You considered of little value?

A. We considered it in this way; that we were not able to determine its collectibility.

Q. And the National Bank Examiner had asked that it be charged off of the books of the Security National Bank, hadn't he?

A. Well, I don't recall as to that; I think there were items in there and notes in there that, as I say, we were not able to determine their collectibility.

Q. Wasn't that $500,000 worth of paper the paper that Mr. Griffey said to Mr. Lewis that unless it was made good that the Security National Bank would not open up next morning, when he was after him to turn his homes in?

A. Well, I will say this, that it was paper taken out of the assets of the Security National Bank.

Q. And paper that you regarded as worthless?

A. We were in doubt about it, yes, sir.

The Court: Taken out of the assets of the Security National or the Liberty National.

A. Out of the combination.

The Court: Well, of course.

A. It was the Liberty National paper.

Q. All of it was not Liberty National paper, was it?

A. I think all of it was Liberty National paper—certain it was.

Mr. Davidson: That is all.

Redirect Examination by Mr. Dodds.

Q. It was all paper that had been sold to you folks at face value within a week, wasn't it? A. Yes, sir.

Q. With no explanation then that it was worthless or what? A. Yes, sir.

Recross Examination by Mr. Davidson.

Q. But under your contract with the Liberty National Bank you held the capital and surplus and undivided profits to the extent of $354,000 to guarantee the Security National Bank against any loss on that paper, didn't you? A. Yes, sir.

Redirect Examination by Mr. Dodds.

Q. There wasn't any captial of the Liberty National Bank, was there, Mr. Seger, as it turned out?

Q. More than the capital was absorbed by the losses.

Q. Practically five times the capital was absorbed by the losses, wasn't it? No, I don't mean that; that would be the original capital.

A. About three times.

Q. The losses were approximately six hundred thousand, were they not? A. Yes, sir.

Q. In addition to this $135,000 in property? A. Yes, sir.

Q. So it would be 750,000? A. Approximately 750,000.

Q. The capital of that bank was $250,000? A. 250.

Mr. Dodds: That is all.

Recross Examination by Mr. Davidson.

Q. The capital and surplus and undivided profits amounted to $354,000, didn't they, Mr. Seger? A. Yes, sir.

Q. Then you took out $135,000 of that paper for these homesteads of these boys? A. Yes, sir.

Mr. Dodds: That is all.

By Mr. Davidson:

Q. You took all the capital and surplus and undivided profits to make good the losses? A. And then some.

Q. And then some.

Redirect Examination by Mr. Dodds.

Q. That $600,000 you had to put up was in addition to all of that, wasn't it? A. Yes, sir.

Mr. Dodds: That is all.

The Court: Stand down.

Mr. Dodds: The Government rests.

(Here follow the exhibits introduced by the respective parties during the trial of the case, the Government's Exhibits appearing first in their proper chronological sequence, followed immediately by the Defendant's Exhibits also in proper chronological order:)

(Clerk's Note: The major portion of the exhibits following were introduced in No. 8622, and the cuts used in the transcript in that case, being taken from the *originals* in the possession of the court stenographer, are used in this transcript.)

Government's Exhibit 1.

Organization Certificate, Federal Reserve Bank of Kansas City.

The undersigned banks, having applied for and been allotted stock in the Federal Reserve Bank of Kansas City now organizing and having been designated by the Reserve Bank Organization Committee to execute the Certificate of Organization as provided by section 4 of the Act of Congress known as the Federal Reserve Act, approved December 23, 1913;

Now, therefore, in order that the statutes of the United States may be fully complied with and that the incorporation of this association as a Federal Reserve Bank may be perfected, the following Organization Certificate is made and executed on this, the 18th day of May, 1914:

1. The title of this association shall be the Federal Reserve Bank of Kansas City.

2. The location of the principal office of this association shall be in the City of Kansas City, Mo., and it shall engage in the business of banking as provided by the said Federal Reserve Act and shall exercise such powers as are prescribed by said Act in District No. 10, as defined by the Reserve Bank Organization Committee, or as modified by the Federal Reserve Board, said district, as now defined, being inclusive of the following states and parts of states:

The States of Kansas, Nebraska, Colorado and Wyoming; all that part of Missouri not included in District No. 8; all that part of Oklahoma north of a line forming the southern boundary of the following counties: Ellis, Dewey, Blaine, Canadian, Cleveland, Pottawatomie, Seminole, Okfuskee, McIntosh, Muskogee and Sequoyah; and all that part of New Mexico north of a line forming the southern boundary of the following counties: McKinley, Sandoval, Santa Fe, San Miguel, and Union.

For a more particular description reference is made to the map filed by the Reserve Bank Organization Committee with the Comptroller of the Currency defining the limits of this district.

3. The amount of capital stock of this association shall be not less than $4,000,000 and shall be maintained at an amount equal to 6 per cent of the capital and surplus of all banks which become members of this association, such stock to be divided into shares of $100 each.

4. The names and places of doing business of the banks executing this certificate are as follows:

Denver National Bank, Denver, Colorado.

Central National Bank, Lincoln, Nebraska.

United States National Bank, Omaha, Nebraska.

First National Bank, Muskogee, Oklahoma.

Rawlins National Bank, Rawlins, Wyoming.

5. The names and places of doing business of the banks which have subscribed to the capital stock of this association and the number of shares subscribed by each are as follows:

Name of Bank	Place of Business	No. of Shares
American National Bank,	Alamosa, Colorado	90
First National Bank,	Arvada, Colorado	20
Farmers National Bank,	Ault, Colorado	33
First National Bank,	Ault, Colorado	16
Berthoud National Bank,	Berthoud, Colorado	36
Boulder National Bank,	Boulder, Colorado	60
First National Bank,	Boulder, Colorado	102
National State Bank,	Boulder, Colorado	90
First National Bank,	Brush, Colorado	30
Stockmens National Bank,	Brush, Colorado	27

District No. 10

Colorado

Name of Bank	Location	No. of Shares
First National Bank,	Akron	20
Alamosa National Bank,	Alamosa	17
First National Bank,	Bighton	18
First National Bank,	Buena Vista	19
First National Bank,	Canon City	30
Fremont County National Bank,	Canon City	72
First National Bank,	Carbondale	27

District No. 10

Colorado

(continued)

Name of Bank	Location	No. of Shares
First National Bank of Douglas County	Castle Rock	20
First National Bank	Cedaredge	16
First National Bank	Center	30
Rocky Mountain National Bank	Central City	48
First National Bank	Central City	60
First National Bank	Colorado City	33
El Paso National Bank	Colorado Springs	180
Colorado Springs National Bank	Colorado Springs	105
Exchange National Bank	Colorado Springs	300
First National Bank	Colorado Springs	300
Montezuma Valley National Bank	Cortez	27
First National Bank	Cortez	18
First National Bank	Cripple Creek	36
Delta National Bank	Delta	45
First National Bank	Delta	42
Colorado National Bank	Denver	900
Denver National Bank	Denver	1350
Federal National Bank	Denver	132
First National Bank	Denver	1350
Hamilton National Bank	Denver	180
United States National Bank	Denver	465
Burns National Bank	Durango	67
First National Bank	Durango	72
First National Bank of Eagle County	Eagle	30
Eaton National Bank	Eaton	24
First National Bank	Eaton	69
First National Bank	Englewood	21
First National Bank	Florence	39
First National Bank	Fort Collins	120
Fort Collins National Bank	Fort Collins	80
Poudre Valley National Bank	Fort Collins	150
First National Bank	Fountain	17
First National Bank	Fort Morgan	72
Morgan County National Bank	Fort Morgan	60
First National Bank	Fowler	22
First National Bank	Fruita	18
Citizens National Bank	Glenwood Springs	54
First National Bank	Glenwood Springs	75
Woods-Rubey National Bank	Golden	60
First National Bank	Granada	16
Grand Valley National Bank	Grand Junction	75

District No. 10

Colorado

(continued)

Name of Bank	Location	No. of Shares
City National Bank,	Greeley	72
First National Bank,	Greeley	120
Greeley National Bank,	Greeley	84
Union National Bank,	Greeley	120
First National Bank,	Gunnison	42
First National Bank,	Hotchkiss	21
First National Bank,	Holly	36
First National Bank,	Holyoke	41
First National Bank,	Hugo	30
First National Bank,	Idaho Springs	60
Merchants & Miners National Bank,	Idaho Springs	44
First National Bank,	Johnstown	18
Citizens National Bank,	Julesburg	21
First National Bank,	Julesburg	36
First National Bank,	Lafayette	15
First National Bank,	LaJara	17
First National Bank,	Lamar	54
Lamar National Bank,	Lamar	36
First National Bank,	Las Animas	33
American National Bank,	Leadville	72
Carbonate National Bank,	Leadville	72
First National Bank,	Littleton	30
Longmont National Bank,	Longmont	36
Farmers National Bank,	Longmont	90
Loveland National Bank,	Loveland	78
First National Bank,	Loveland	39
First National Bank,	La Junta	60
First National Bank,	Mancos	34
First National Bank,	Meeker	30
First National Bank,	Monte Vista	30
First National Bank,	Montrose	60
Montrose National Bank,	Montrose	48
First National Bank,	Olathe	16
First National Bank,	Ordway	19
Palisades National Bank,	Palisades	18
First National Bank,	Pueblo	450
Mercantile National Bank,	Pueblo	162
Western National Bank,	Pueblo	72
First National Bank,	Rifle	36
First National Bank,	Rocky Ford	42
Rocky Ford National Bank,	Rocky Ford	39

District No. 10

Colorado

(continued)

Name of Bank Location	No. of Shares
First National Bank, Saguache	36
Commercial National Bank, Salida	34
First National Bank, Salida	72
First National Bank, Sedgewick	17
First National Bank, Silverton	36
First National Bank, Steamboat Springs	18
Farmers National Bank, Sterling	36
First National Bank, Sterling	75
Logan County National Bank, Sterling	75
First National Bank, Telluride	60
First National Bank, Trinidad	150
Trinidad National Bank, Trinidad	90
First National Bank, Walsenburg	60
First National Bank, Wellington	19
First National Bank, Wray	24
National Bank of Wray	20
First National Bank, Yuma	18
Platteville National Bank, Platteville	18
First National Bank, Windsor	30

District No. 10

Kansas

Farmers National Bank, Abilene	45
Abilene National Bank, Abilene	48
Farmers National Bank, Alma	21
Alma National Bank, Alma	36
First National Bank, Almena	35
Citizens National Bank, Anthony	60
First National Bank, Anthony	36
Homa National Bank, Arkansas City	75
Stockgrowers National Bank, Ashland	39
Exchange National Bank, Atchison	165
First National Bank, Atchison	84
First National Bank, Attica	17
First National Bank, Augusta	18
First National Bank, Barnard	25
Baxter National Bank, Baxter Springs	18
The National Bank of Belleville	36
Peoples National Bank, Belleville	27
German National Bank of No. Kansas, Beloit	54

District No. 10

Kansas

(continued)

Name of Bank	Location	No. of Shares
First National Bank, Bonner Springs		18
First National Bank, Burlingame		36
Farmers National Bank, Burlington		40
Peoples National Bank, Burlington		45
Jewell County National Bank, Burr Oak		42
First National Bank, Beloit		66
Cedar Vale National Bank, Cedar Vale		36
First National Bank, Cherokee		18
Council Grove National Bank, Council Grove		44
First National Bank, Coffeyville		72
Caney Valley National Bank, Caney		42
Home National Bank, Caney		30
Dosbaugh National Bank, Cedar Vale		45
First National Bank, Centralia		30
First National Bank, Chanute		72
Montgomery County National Bank, Cherryvale		34
First National Bank, Clay Center		84
Peoples National Bank, Clay Center		90
First National Bank, Clifton		21
Condon National Bank, Coffeyville		84
Coldwater National Bank, Coldwater		18
First National Bank, Columbus		36
First National Bank, Concordia		78
First National Bank, Conway Springs		18
Chase County National Bank, Cottonwood Falls		90
Exchange National Bank, Cottonwood Falls		60
First National Bank, Delphos		20
National Bank of Commerce, Dodge City		30
First National Bank, Dexter		17
First National Bank, Dighton		29
First National Bank, Edmond		18
First National Bank, Edna		18
El Dorado National Bank, El Dorado		41
Farmers & Merchants National Bank, El Dorado		60
First National Bank, Elk City		45
Central National Bank, Ellsworth		90
Citizens National Bank, Emporia		180
Emporia National Bank, Emporia		180
First National Bank, Englewood		18
Citizens National Bank, Eureka		36
First National Bank, Eureka		55

District No. 10

Kansas

(continued)

Name of Bank	Location	No. of Shares
Home National Bank	Eureka	21
First National Bank	Fowler	18
First National Bank	Formosa	18
Army National Bank	Ft. Leavenworth	20
Citizens National Bank	Fort Scott	72
Galena National Bank	Galena	42
First National Bank	Garden City	54
Garden City National Bank	Garden City	36
National Bank of Commerce	Garnett	30
First National Bank	Gaylord	23
First National Bank	Girard	54
First National Bank	Glasco	48
First National Bank	Goff	21
Farmers National Bank	Goodland	21
First National Bank	Goodland	23
Citizens National Bank	Great Bend	39
First National Bank	Great Bend	72
Gypsum Valley National Bank	Gypsum	24
The National Bank of Harper		24
First National Bank	Hamilton	30
First National Bank	Hiawatha	37
First National Bank	Hillsboro	24
Hartford National Bank	Hartford	24
First National Bank	Havensville	27
First National Bank	Hays	36
First National Bank	Herington	30
First National Bank	Highland	21
First National Bank	Hoisington	18
First National Bank	Holton	43
First National Bank	Horton	60
First National Bank	Howard	36
Howard National Bank	Howard	36
First National Bank	Hoxie	60
Humboldt National Bank	Humboldt	24
Commercial National Bank	Hutchison	87
First National Bank	Hutchison	180
Citizens National Bank	Independence	135
Commerce National Bank	Independence	120
First National Bank	Independence	120
Northrup National Bank	Iola	42
First National Bank	Jewell City	60

District No. 10

Kansas

(continued)

Name of Bank Location	No. of Shares
Central National Bank, Junction City	90
Commercial National Bank, Kansas City	360
Peoples National Bank, Kansas City	127
First National Bank, Kensington	23
First National Bank, Kingman	36
National Bank of Kinsley	24
First National Bank, Kiowa	20
First National Bank, Junction City	90
First National Bank, La Harpe	18
Moffet Brothers National Bank, Larned	36
First National Bank, Le Roy	18
Lawrence National Bank, Lawrence	72
Merchants National Bank, Lawrence	72
Watkins National Bank, Lawrence	120
First National Bank, Leavenworth	216
Leavenworth National Bank, Leavenworth	180
Manufacturers National Bank, Leavenworth	108
First National Bank, Lebanon	24
First National Bank, Liberal	36
Farmers National Bank, Lincoln	30
First National Bank, Lindsborg	36
First National Bank, Logan	26
Home National Bank, Longton	17
First National Bank, Lucas	36
First National Bank, Luray	24
First National Bank, Lyndon	18
Lyons National Bank, Lyons	18
First National Bank, Madison	21
First National Bank, Manhattan	72
Union National Bank, Manhattan	45
Mankato National Bank, Mankato	51
Marion National Bank, Marion	23
First National Bank, Marysville	60
First National Bank, Mayetta	18
First National Bank, Meade	27
Citizens National Bank, Minneapolis	36
Minneapolis National Bank, Minneapolis	44
First National Bank, Moline	24
Moline National Bank, Moline	36
First National Bank, Mt. Hope	21
National Bank of Ness City	18

District No. 10

Kansas

(continued)

Name of Bank Location	No. of Shares
First National Bank, Natoma	21
First National Bank, Neodesha	42
Citizens National Bank, Ness City	39
First National Bank, Newton	45
Midland National Bank, Newton	45
First National Bank, Norcatur	18
First National Bank, Nortonville	27
First National Bank, Oakley	29
First National Bank, Overbrook	20
Farmers National Bank, Oberlin	45
Oberlin National Bank, Oberlin	42
First National Bank, Olathe	36
Exchange National Bank, Osborne	45
Farmers National Bank, Osborne	24
First National Bank, Osborne	45
First National Bank, Ottawa	72
Peoples National Bank, Ottawa	60
Miami County National Bank, Paola	96
Peoples National Bank, Paola	54
First National Bank, Parsons	45
First National Bank, Peabody	45
First National Bank, Phillipsburg	36
First National Bank, Pittsburg	120
National Bank of Commerce, Pittsburg	75
The National Bank of Pittsburg, Pittsburg	120
First National Bank, Plainville	54
First National Bank, Pleasonton	17
First National Bank, Prairie View	16
The National Bank of Prate	36
National Bank of Seneca, Seneca	51
First National Bank, St. Marys	36
First National Bank, Sterling	36
The National Bank of Sabetha	60
First National Bank, St. John	36
St. John National Bank, St. John	18
Farmers National Bank, Salina	135
National Bank of America, Salina	90
First National Bank, Scott City	21
First National Bank, Sedan	60
First National Bank, Seneca	42
First National Bank, Smith Center	60

District No. 10

Kansas

(continued)

Name of Bank Location	No. of Shares
Solomon National Bank, Solomon	18
First National Bank, Spearville	22
Farmers National Bank, Stafford	30
National State Bank, Stockton	45
Stockton National Bank, Stockton	36
First National Bank, Syracuse	36
Central National Bank, Topeka	162
Farmers National Bank, Topeka	72
Merchants National Bank, Topeka	120
First National Bank, Toronto	23
First National Bank, Troy	18
First National Bank, Wamego	54
First National Bank, White City	27
First National Bank, Washington	45
Washington National Bank, Washington	27
First National Bank, Waverly	18
Wellington National Bank, Wellington	36
National Bank of Commerce, Wellington	32
First National Bank, Wetmore	21
Fourth National Bank, Wichita	243
Kansas National Bank, Wichita	210
National Bank of Commerce, Wichita	180
Union Stock Yards National Bank, Wichita	39
Cowley County National Bank, Winfield	105
First National Bank, Winfield	120
Winfield National Bank, Winfield	60

District No. 10

Missouri

First National Bank, Adrian	15
First National Bank, Albany	22
First National Bank, Burlington Junction	26
First National Bank, Cameron	48
First National Bank, Cartersville	78
Joplin National Bank, Joplin	120
Carthage National Bank, Carthage	75
Central National Bank, Carthage	120
First National Bank, Carthage	120
First National Bank, Excelsior Springs	18
First National Bank, Fairview	18

District No. 10

Missouri

(continued)

Name of Bank Location	No. of Shares
First National Bank, Golden City	20
First National Bank, Grant City	24
Citizens National Bank, Harrisonville	21
First National Bank, Independence	72
First National Bank, Jasper	19
Cunningham National Bank, Joplin	180
First National Bank, Joplin	120
Commonwealth National Bank, Kansas City	180
Drovers National Bank, Kansas City	360
Park National Bank, Kansas City	17
First National Bank, Kansas City	1200
Gate City National Bank, Kansas City	132
Inter-State National Bank, Kansas City	600
National Reserve Bank, Kansas City	828
New England National Bank, Kansas City	720
Security National Bank, Kansas City	150
Southwest National Bank, Kansas City	2160
Stock Yards National Bank, Kansas City	144
Traders National Bank, Kansas City	160
Citizens National Bank, King City	36
First National Bank, King City	75
First National Bank, Lamar	71
First National Bank, Lathrop	39
First National Bank, Liberty	60
First National Bank, Maryville	72
First National Bank, Neosho	57
First National Bank, Nevada	120
Thornton National Bank, Nevada	72
National Bank of North Kansas City	15
First National Bank, Plattsburg	102
Farmers National Bank, Pleasant Hill	23
Burns National Bank, St. Joseph	180
First National Bank of Buchanan County, St. Joseph	480
German-American National Bank, St. Joseph	210
Tootle-Lemon National Bank, St. Joseph	210
First National Bank, Sarcoxie	18
First National Bank, Stewartville	51
First National Bank, Savannah	32
First National Bank, Tarkio	60
National Bank of Webb City, Webb City	72

District No. 10

Nebraska

Name of Bank	Location	No. of Shares
First National Bank,	Adams	20
National Bank of	Ainsworth	30
Albion National Bank,	Albion	60
First National Bank,	Albion	44
First National Bank,	Allen	17
First National Bank,	Alliance	60
Alliance National Bank,	Alliance	60
First National Bank,	Auburn	51
First National Bank,	Ansley	30
First National Bank,	Arlington	18
National Bank of	Ashland	48
First National Bank,	Atkinson	45
Carson National Bank,	Auburn	66
Aurora National Bank,	Aurora	60
Fidelity National Bank,	Aurora	36
Beatrice National Bank,	Beatrice	105
First National Bank,	Beatrice	84
First National Bank,	Beemer	23
First National Bank,	Belden	20
First National Bank,	Benedict	21
First National Bank,	Bertrand	18
First National Bank,	Blue Hill	42
First National Bank,	Bradshaw	27
First National Bank,	Bridgeport	18
Custer National Bank,	Broken Bow	18
First National Bank,	Burwell	24
First National Bank,	Butte	36
First National Bank,	Bayard	17
First National Bank,	Brunswick	16
First National Bank,	Bristow	17
First National Bank,	Bancroft	30
Blair National Bank,	Blair	48
First National Bank,	Cambridge	30
First National Bank,	Campbell	17
First National Bank,	Carroll	27
Central National Bank,	Central City	54
First National Bank,	Chadron	66
First National Bank,	Clarks	30
First National Bank,	Coleridge	30
Coleridge National Bank,	Coleridge	28
Commercial National Bank,	Columbus	48
First National Bank,	Columbus	47
German National Bank,	Columbus	72

District No. 10

Nebraska

(continued)

Name of Bank Location	No. of Shares
First National Bank, Cozard	45
First National Bank, Craig	18
First National Bank, Crawford	36
Creighton National Bank, Creighton	20
City National Bank, Crete	20
First National Mank, Crete	36
First National Bank, Crofton	18
First National Bank, Callaway	23
First National Bank, Cedar Rapids	21
First National Bank, Chappell	18
Central Nebraska National Bank, David City	45
City National Bank, David City	45
First National Bank, David City	54
First National Bank, Decatur	34
First National Bank, Diller	36
First National Bank, Dodge	21
First National Bank, Elgin	21
First National Bank, Elwood	23
First National Bank, Emerson	30
First National Bank, Fremont	105
Commercial National Bank, Fremont	108
First National Bank, Fullerton	42
Fullerton National Bank, Fullerton	41
Farmers & Merchants National Bank, Faribury	36
First National Bank, Fairbury	72
First National Bank, Falls City	39
Farmers & Merchants National Bank, Fremont	84
Fremont National Bank, Fremont	180
First National Bank, Friend	68
First National Bank, Genoa	36
Genoa National Bank, Genoa	21
Gering National Bank, Gering	17
First National Bank, Gordon	51
Citizens National Bank, Gothenburg	36
First National Bank, Grand Island	129
Grand Island National Bank, Grand Island	120
First National Bank, Greeley	18
First National Bank, Greenwood	18
First National Bank, Gresham	27
First National Bank, Hampton	22
First National Bank, Harrison	36

District No. 10

Nebraska

(continued)

Name of Bank	Location	No. of Shares
Hartington National Bank,	Hartington	33
Exchange National Bank,	Hastings	72
First National Bank,	Havelock	17
First National Bank,	Hayes Center	18
First National Bank,	Hay Springs	23
First National Bank,	Holdrege	72
City National Bank,	Holdrege	48
First National Bank,	Hooper	30
First National Bank,	Humboldt	24
First National Bank,	Humphrey	19
First National Bank,	Hartington	69
First National Bank,	Hastings	240
First National Bank,	Hemingford	18
German National Bank,	Johnson	21
First National Bank,	Johnson	20
Laurel National Bank,	Laurel	26
First National Bank,	Leigh	42
Dawson County National Bank,	Lexington	36
Central National Bank,	Lincoln	108
City National Bank,	Lincoln	180
First National Bank,	Lincoln	360
First National Bank,	Litchfield	18
First National Bank,	Loomis	21
First National Bank,	Loup City	30
First National Bank,	Lynch	17
First National Bank,	Lyons	18
First National Bank,	Laurel	32
Farmers National Bank,	Madison	18
First National Bank,	Madison	43
First National Bank,	Marquette	18
Citizens National Bank,	Mc Cook	45
First National Bank,	Mc Cook	45
McCook National Bank,	Mc Cook	36
First National Bank,	Minden	36
Minden Exchange National Bank,	Minden	36
Madison National Bank,	Madison	48
First National Bank,	Mitchell	30
First National Bank,	Morrill	17
First National Bank,	Naper	18
Otoe County National Bank,	Nebraska City	35
Merchants National Bank,	Nebraska City	48

District No. 10

Nebraska

(continued)

Name of Bank Location	No. of Shares
Nebraska City National Bank, Nebraska City	72
Neligh National Bank, Neligh	42
First National Bank, Newman Grove	27
Citizens National Bank, Norfolk	42
Norfolk National Bank, Norfolk	90
First National Bank, North Bend	42
First National Bank, North Platte	90
Farmers & Merchants National Bank, Oakland	45
First National Bank, Oakland	45
City National Bank, Omaha	334
Corn Exchange National Bank, Omaha	210
Merchants National Bank, Omaha	600
Omaha National Bank, Omaha	900
United States National Bank, Omaha	840
Nebraska National Bank, Omaha	150
First National Bank, Omaha	900
First National Bank, Overton	20
O'Neill National Bank, O'Neill	48
First National Bank, O'Neill	72
First National Bank, Ord	90
Citizens National Bank, Orleans	18
First National Bank, Osceola	30
First National Bank, Oshkosh	16
First National Bank, Plainview	29
Farmers National Bank, Pawnee City	45
First National Bank, Pender	39
Pender National Bank, Pender	34
Farmers National Bank, Pilger	45
First National Bank, Pilger	36
First National Bank, Plattsmouth	45
First National Bank, Polk	24
First National Bank, Randolph	36
Security National Bank, Randolph	36
Stockmens National Bank, Rushville	25
First National Bank, St. Edwards	25
Smith National Bank, St. Edwards	18
First National Bank, Sargent	30
First National Bank, Schuyler	45
Schuyler National Bank, Schuyler	39
First National Bank, Seward	36
Jones National Bank, Seward	39

District No. 10

Nebraska

(continued)

Name of Bank Location	No. of Shares
Live Stock National Bank, South Omaha	120
First National Bank, Spaulding	36
First National Bank, Spencer	72
First National Bank, Stanton	75
Stanton National Bank, Stanton	41
First National Bank, Stromsburg	36
First National Bank, Stuart	18
FirstNational Bank, Syracuse	36
First National Bank, Scribner	25
Packers National Bank, South Omaha	180
Stock Yards National Bank, South Omaha	675
Scottsbluf National Bank, Scotts Bluff	39
First National Bank, Shelby	20
Tecumseh National Bank, Tecumseh	36
Tilden National Bank, Tilden	39
First National Bank, Tilden	36
First National Bank, Tekamah	72
First National Bank, Trenton	18
First National Bank, University Place	30
First National Bank, Utica	22
First National Bank, Valentine	38
Saunders County National Bank, Wahoo	52
Farmers National Bank, Wakefield	30
First National Bank, Wakefield	22
Walthill National Bank, Walthill	18
Commercial National Bank, Wausa	36
First National Bank, Wausa	51
First National Bank, Wayne	57
City National Bank, Weeping Water	36
First National Bank, Wahoo	60
First National Bank, Walthill	36
First National Bank, Wymore	36
First National Bank, Weeping Water	36
First National Bank, West Point	42
West Point National Bank, West Point	60
National Bank of Wilber, Wilber	30
First National Bank, Wilcox	18
First National Bank, Winnebago	17
Citizens National Bank, Wisner	51
First National Bank, Wood River	36
City National Bank, York	120

District No. 10

Nebraska

(continued)

Name of Bank Location	No. of Shares
First National Bank, York	180
Citizens National Bank, Wayne	44
First National Bank, Wisner	45
First National Bank, Wynot	17
First National Bank, Imperial	18
Gothenburg National Bank, Gothenburg	39
German National Bank, Hastings	42
National Bank of Humboldt	24
Central National Bank, Kearney	48
National Bank of Commerce, Lincoln	150
First National Bank, Gering	35

District No. 10

New Mexico.

First National Bank, Cimmarron	18
First National Bank, Clayton	54
First National Bank, Farmington	35
San Juan County National Bank, Farmington	20
First National Bank, Las Vegas	72
San Miguel National Bank, Las Vegas	90
First National Bank, Nara Visa	16
First National Bank, Raton	90
National Bank of New Mexico, Raton	36
First National Bank, Santa Fe	135

District No. 10

Oklahoma

First National Bank, Afton	17
First National Bank, Alva	26
Bartlesville National Bank, Bartlesville	90
First National Bank, Bartlesville	60
Union National Bank, Bartlesville	90
First National Bank, Beggs	23
Farmers National Bank, Beggs	17
First National Bank, Bixby	15
First National Bank, Blackwell	30
First National Bank, Braggs	17
First National Bank, Braman	16

District No. 10

Oklahoma

(continued)

Name of Bank Location	No. of Shares
First National Bank, Bristow	18
Bristow National Bank, Bristow	17
Citizens National Bank, Broken Arrow	18
First National Bank, Broken Arrow	18
First National Bank, Buffalo	18
Carmen National Bank, Carmen	18
First National Bank, Cashion	18
First National Bank, Centralia	21
First National Bank, Chandler	36
Union National Bank, Chandler	36
Commercial National Bank, Checotah	33
First National Bank, Checotah	36
Peoples National Bank, Checotah	17
Alfalfa County National Bank, Cherokee	18
Farmers National Bank, Cherokee	17
First National Bank, Claremore	36
National Bank of Commerce, Claremore	32
Cleveland National Bank, Cleveland	27
First National Bank, Cleveland	45
Collinsville National Bank, Collinsville	17
First National Bank, Dewey	24
Security National Bank, Dewey	18
First National Bank, Cushing	18
Farmers National Bank, Cushing	17
First National Bank, Collinsville	24
First National Bank, Coweta	18
National Bank of Commerce, Coweta	18
Citizens National Bank, Edmond	16
First National Bank, Edmond	18
Citizens National Bank, El Reno	36
First National Bank, El Reno	36
Enid National Bank, Enid	84
First National Bank, Enid	90
Eufaula National Bank, Eufaula	36
First National Bank, Eufaula	36
State National Bank, Eufaula	17
Fairfax National Bank, Fairfax	18
First National Bank, Fairfax	31
Farmers & Merchants National Bank, Fairview	17
First National Bank, Foraker	17
Farmers National Bank, Ft. Gibson	21

District No. 10

Oklahoma

(continued)

Name of Bank	Location	No. of Shares
First National Bank	Geary	17
First National Bank	Grove	18
First National Bank	Guthrie	69
City National Bank	Guymon	18
First National Bank	Guymon	18
First National Bank	Harrah	17
First National Bank	Haskell	30
Haskell National Bank	Haskell	18
Farmers & Merchants National Bank	Hennessey	17
First National Bank	Hennessey	18
First National Bank	Henryetta	36
Miners National Bank	Henryetta	17
First National Bank	Hominy	33
National Bank of Commerce	Hominy	17
First National Bank	Hulbert	17
Farmers National Bank	Kaw City	18
National Bank of Kaw City	Kaw City	17
First National Bank	Kingfisher	21
Peoples National Bank	Kingfisher	36
First National Bank	Konawa	18
Konawa National Bank	Konawa	18
First National Bank	Lahoma	17
Lenapah National Bank	Lenapah	17
First National Bank	Luther	18
First National Bank	Maud	18
First National Bank	McLoud	18
First National Bank	Medford	18
First National Bank	Miami	48
Ottawa County National Bank	Miami	36
First National Bank	Morris	17
First National Bank	Muskogee	210
American National Bank	Muskogee	100
Commercial National Bank	Muskogee	195
Exchange National Bank	Muskogee	101
Muskogee National Bank	Muskogee	105
Eastman National Bank	Newkirk	36
First National Bank	Newkirk	18
First National Bank	Noble	18
Farmers National Bank	Norman	22
First National Bank	Norman	42
Commercial National Bank	Nowata	36

District No. 10

Oklahoma

(continued)

Name of Bank	Location	No. of Shares
First National Bank,	Nowata	60
Nowata National Bank,	Nowata	45
First National Bank,	Okemah	17
Okemah National Bank,	Okemah	18
American National Bank,	Oklahoma City	329
Farmers National Bank,	Oklahoma City	90
Oklahoma Stock Yard National Bank,	Oklahoma City	228
Security National Bank,	Oklahoma City	105
State National Bank,	Oklahoma City	210
Western National Bank,	Oklahoma City	72
Citizens National Bank,	Okmulgee	69
First National Bank,	Okmulgee	36
First National Bank,	Oktaha	18
First National Bank,	Owassa	18
American National Bank,	Pawhuska	18
Citizens National Bank,	Pawhuska	36
First National Bank,	Pawhuska	34
First National Bank,	Pawnee	36
Pawnee National Bank,	Pawnee	36
First National Bank,	Perry	18
Farmers National Bank,	Ponca City	39
Germania National Bank,	Ponca City	18
Farmers National Bank,	Pond Creek	16
First National Bank,	Porter	24
First National Bank,	Porum	17
First National Bank,	Prague	18
Prague National Bank,	Prague	18
First National Bank,	Pryor Creek	60
First National Bank,	Ralston	17
Citizens National Bank,	Sallisaw	18
Merchants National Bank,	Sallisaw	36
American National Bank,	Sapulpa	36
First National Bank,	Sapulpa	31
First National Bank,	Sasakwa	17
First National Bank,	Seiling	18
First National Bank,	Seminole	17
Shattuck National Bank,	Shattuck	21
National Bank of Commerce,	Shawnee	71
Shawnee National Bank,	Shawnee	60
State National Bank,	Shawnee	71
First National Bank,	Skiatook	17

District No. 10

Oklahoma

(continued)

Name of Bank	Location	No. of Shares
First National Bank	Stillwater	36
Stillwater National Bank	Stillwater	21
First National Bank	Stilwell	17
First National Bank	Stroud	18
Central National Bank	Tahlequah	17
First National Bank	Tahlequah	60
First National Bank	Taloga	18
Farmers National Bank	Tecumseh	20
First National Bank	Tecumseh	18
First National Bank	Terlton	16
First National Bank	Texhoma	18
Tonkawa National Bank	Tonkawa	17
American National Bank	Tulsa	67
Central National Bank	Tulsa	120
Exchange National Bank	Tulsa	240
First National Bank	Tulsa	84
Liberty National Bank	Tulsa	61
National Bank of Commerce	Tulsa	66
First National Bank	Tyrone	17
First National Bank	Vinita	74
Vinita National Bank	Vinita	47
First National Bank	Wagoner	48
First National Bank	Wanette	18
State National Bank	Wanette	18
First National Bank	Watonga	18
Waukomis National Bank	Waukomis	20
First National Bank	Waynoka	16
First National Bank	Webbers Falls	22
First National Bank	Welcetka	18
First National Bank	Wellston	16
First National Bank	Westville	17
Farmers National Bank	Wewoka	18
First National Bank	Woodward	36
First National Bank	Yale	16
First National Bank	Yukon	18
Yukon National Bank	Yukon	21

District No. 10

Wyoming

Name of Bank	Location	No. of Shares
First National Bank	Buffalo	60
Casper National Bank	Casper	45
Stockmen's National Bank	Casper	60
First National Bank	Cheyenne	120
Stock Growers National Bank	Cheyenne	120
First National Bank	Cody	36
Shoshone National Bank	Cody	20
Douglas National Bank	Douglas	34
First National Bank	Douglas	60
Evanston National Bank	Evanston	42
First National Bank	Evanston	60
First National Bank	Kemmerer	90
First National Bank	Lander	36
Albany County National Bank	Laramie	120
First National Bank	Laramie	72
First National Bank	Meeteetse	23
First National Bank	Newcastle	30
First National Bank	Powell	15
First National Bank	Rawlins	72
Rawlins National Bank	Rawlins	93
Stock Growers National Bank	Rawlins	57
First National Bank	Rock Springs	90
Rock Springs National Bank	Rock Springs	120
First National Bank	Sheridan	60
Sheridan National Bank	Sheridan	36
First National Bank	Shoshoni	18
First National Bank	Thermopolis	27
First National Bank	Torrington	18
First National Bank	Worland	18
		54,547

This certificate is made for the purpose of enabling those banks herein named as executing this certificate or having subscribed to the stock of this association, together with such other banks as may hereafter subscribe to the capital stock of this association, to avail themselves of the advantages, privileges, and benefits of the Act of Congress known as the Federal Reserve Act, approved December 23, 1913, and such other acts as may be passed by Congress amending or supplementing the said Federal Reserve Act.

In Witness Whereof, the banks making this certificate have caused the same to be executed by their respective pres-

idents or vice presidents, their corporate seals attached, attested by their respective cashiers, on this the 18th day of May, 1914.

DENVER NATIONAL BANK OF DENVER, COLORADO,

(Seal) By J. C. Mitchell, President.

Attest: E. I. Irish, Cashier.

CENTRAL NATIONAL BANK OF LINCOLN, NEBRASKA,

(Seal) By P. D. Hall, President.

Attest: Sam'l Patterson, Cashier.

UNITED STATES NATIONAL BANK OF OMAHA, NEBRASKA,

(Seal) By V. B. Caldwell, Vice President.

Attest: W. O. Rhodes, Cashier.

FIRST NATIONAL BANK OF MUSKOGEE, OKLAHOMA,

(Seal) By Asa E. Ramsey, Vice President.

Attest: S. W. Duncan, Cashier.

RAWLINS NATIONAL BANK OF RAWLINS, WYOMING,

(Seal) By William Daley, President.

Attest: J. A. Rendle, Cashier.

State of Missouri,
City of Kansas City.

This day personally appeared before me, a notary public, in and for the City of Kansas City, State of Missouri,

J. C. MITCHELL,
P. L. HALL,
V. B. CALDWELL,
ASA E. RAMSEY,
WILLIAM DALEY,

whose names are signed to the foregoing Certificate of Organization and who severally acknowledged that they executed this certificate, as the officers of and by authority of the board of directors of their respective banks, for the purposes

mentioned therein; that the seals affixed are the corporate seals of such banks and were duly affixed under authority of their boards of directors.

Witness my hand and official seal, this the 18th day of May, 1914. George E. Dewar, Notary Public. (Seal)

(Appearing upon the front page of said Organization Certificate is the following stamp:) Received May 21, 1914. Comptroller of the Currency.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Organization Certificate of the Federal Reserve Bank of Kansas City and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department in the City of Washington and District of Columbia, this Fourteenth day of January, A. D. 1926.

J. W. McINTOSH,

JOL (Seal) Comptroller of the Currency.

Form 1980 12-20-23-500 Gov. Ex. No. 1 1-22-26

Government's Exhibit No. 2.

Certificate for Certified Copy

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the papers hereto attached are true and complete photostat copies of the original letter addressed to the Comptroller of the Currency by the Reserve Bank Organization Committee, dated April 3, 1914, and of the decision of the Reserve Bank Organization Committee determining the Federal Reserve Districts and the location of the Federal Reserve Banks, and of the whole of such originals on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this Fourteenth day of January, A. D. 1926.

J. W. McINTOSH,
Comptroller of the Currency.

J.O.L. (Seal)

Form 1980. 8-13-24-600.

Address Reply to
Reserve Bank Organization Committee
Treasury Department
Washington, D. C.

Reserve Bank Organization Committee
Washington, D. C.

April 3, 1914.

Sir:

Pursuant to section 4 of the Act of Congress known as the Federal Reserve Act, approved December 23, 1913, we, the undersigned,

W. G. McAdoo, Secretary of the Treasury,

D. F. Houston, Secretary of Agriculture, and

John Skelton Williams, Comptroller of the Currency,

constituting the Reserve Bank Organization Committee, do hereby certify that after a full and complete investigation made pursuant to the provisions of said act, the Committee has designated twelve (12) Federal Reserve Cities and defined the geographical limits of the twelve districts to be served by banks to be organized in said cities in accordance with the decision dated April 2nd, 1914, hereto attached.

Respectfully,

W. G. McADOO,
D. F. HOUSTON,
JNO. SKELTON WILLIAMS,
Reserve Bank Organization Committee.

Comptroller of the Currency,
Washington, D. C.

Decision of the Reserve Bank Organization Committee Determining the Federal Reserve Districts and the Location of the Federal Reserve Banks.

(Under the Federal Reserve Act approved December 23, 1913)

The Federal Reserve Act directs the Reserve Bank Organization Committee to "designated not less than eight nor more than twelve cities to be known as Federal reserve cities"; to "divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities," and to apportion the districts "with due regard to the convenience and customary course of business." The act provides that the districts may not necessarily be coterminous with any state or states.

In determining the reserve districts and in designating the cities within such district where Federal Reserve banks shall be severally located, the organization committee has given full consideration to the important factors bearing upon the subject. The committee held public hearings in eighteen of the leading cities from the Atlantic to the Pacific and from the Great Lakes to the Gulf, and was materially assisted thereby in determining the districts and the reserve cities.

Every reasonable opportunity has been afforded applicant cities to furnish evidence to support their claims as locations for Federal Reserve banks.

More than 200 cities, through their clearing-house associations, chambers of commerce, and other representatives, were heard. Of these, thirty-seven cities asked to be designated as the headquarters of a Federal Reserve bank.

The majority of the organization committee, including its chairman and the Secretary of Agriculture, were present at all hearings, and stenographic reports of the proceedings were made for more deliberate consideration. Independent investigations were, in addition, made through the Treasury Department, and the preference of each bank as to the location of the Federal Reserve bank with which it desired to be connected was ascertained by an independent card ballot addressed to each of the 7,471 national banks throughout the country which had formally assented to the provisions of the Federal Reserve Act.

Among the many factors which governed the committee in determining the respective districts and the selection of the cities which have been chosen were:

First: The ability of the member banks within the district to provide the minimum capital of $4,000,000 required for the Federal Reserve bank, on the basis of six per cent of the capital stock and surplus of member banks within the district.

Second. The mercantile, industrial, and financial connections existing in each district and the relations between the various portions of the district and the city selected for the location of the Federal Reserve bank.

Third. The probable ability of the Federal Reserve bank in each district, after organization and after the provisions of the Federal Reserve Act shall have gone into effect, to meet the legitimate demands of business, whether normal or abnormal, in accordance with the spirit and provisions of the Federal Reserve Act.

Fourth. The fair and equitable division of the available capital for the Federal Reserve banks among the districts created.

Fifth. The general geographical situation of the district, transportation lines, and the facilities for speedy communication between the Federal Reserve bank and all portions of the district.

Sixth. The population, area, and prevalent business activities of the district, whether agricultural, manufacturing, mining, or commercial, its record of growth and development in the past and its prospects for the future.

In determining the several districts the committee has endeavored to follow state lines as closely as practicable, and wherever it has been found necessary to deviate the division has been along lines which are believed to be the most convenient and advantageous for the district affected.

The twelve districts and the twelve cities selected for the location of the Federal Reserve banks are as follows:

District No. 1.

The New England States; Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, with the city of Boston as the location of the Federal Reserve bank.

This district contains 445 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve bank of Boston, on the basis of six per sent of the total capital stock and surplus of the assenting national banks in the district, will amount to $9,924,-543

District No. 2.

The State of New York, with New York City as the location of the Federal Reserve bank.

This district contains 477 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve bank of New York, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district will amount to $20,621,606; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $20,687.606.

District No. 3.

The States of New Jersey and Delaware and all that part of Pennsylvania located east of the Western boundary of the following counties; McKean, Elk, Clearfield, Cambria, and Bedford, with the Federal Reserve bank in the City of Philadelphia.

This district contains 757 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve bank of Philadelphia, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $12,488,138; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $12,500,738.

District No. 4.

The State of Ohio; all that part of Pennsylvania lying west of district No. 3; the counties of Marshall, Ohio, Brooke, and Hancock, in the State of West Virginia; and all that part of the State of Kentucky located east of the western boundary of the following counties; Boone, Grant, Scott, Woodford, Jessamine, Garrard, Lincoln, Pulaski, and McCreary; with the City of Cleveland, Ohio, as the location of the Federal Reserve bank.

This district contains 767 national banks which heve accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Cleveland, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $12,007,384; and if there be added six per cent of the capital

and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $12,100,384.

District No. 5.

The District of Columbia, and the States of Maryland, Virginia, North Carolina, South Carolina, and all of West Virginia except the counties of Marshall, Ohio, Brooke, and Hancock, with the Federal Reserve bank located in the City of Richmond, Va.

This district contains 475 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Richmond, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $6,303,301; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $6,542,713.

District No. 6.

The States of Alabama, Georgia, and Florida; all that part of Tennessee located east of the western boundary of the following counties; Stewart, Houston, Wayne, Humphreys, and Perry; all that part of Mississippi located south of the northern boundary of the following counties; Issaquena, Sharkey, Yazoo, Kemper, Madison, Leake, and Neshoba; and all of the southeastern part of Louisiana located east of the western boundary of the following parishes; Pointe Coupee, Iberville, Assumption, and Terrebonne, with the City of Atlanta, Ga., as the location of the Federal Reserve Bank.

This district contains 372 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Atlanta, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $4,641,193; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $4,702,558.

District No. 7.

The State of Iowa; all that part of Wisconsin located south of the northern boundary of the following counties; Ver-

non, Sauk, Columbia, Dodge, Washington, and Ozaukee; all of the southern peninsula of Michigan, viz, that part east of Lake Michigan; all that part of Illinois located north of a line forming the southern boundary of the following counties: Hancock, Schuyler, Cass, Sangamon, Christian, Shelby, Cumberland, and Clark; and all that part of Indiana north of a line forming the southern boundary of the following counties; Vigo, Clay, Owen, Monroe, Brown, Bartholomew, Jennings, Ripley, and Ohio, with the Federal Reserve Bank located in the City of Chicago, Ill.

This district contains 952 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Chicago, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district will amount to $12,479,876; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $12,967,701.

District No. 8.

The State of Arkansas, all that part of Missouri located east of the western boundary of the following counties; Harrison, Daviess, Caldwell, Ray, Lafayette, Johnson, Henry, StClair, Cedar, Dade, Lawrence, and Barry; all that part of Illinois not included in district No. 7; all that part of Indiana not included in district No. 7; all that part of Kentucky not included in district No. 4; all that part of Tennessee not included in district No. 6; and all that part of Mississippi not included in district No. 6, with the City of St. Louis, Mo., as the location of the Federal Reserve Bank.

This district contains 458 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of St. Louis, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $4,990,761; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $6,367,006.

District No. 9.

The states of Montana, North Dakota, South Dakota, Minnesota, all that part of Wisconsin not included in district

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No. 7, and all that part of Michigan not included in district No. 7, with the City of Minneapolis, Minn., as the location of the Federal Reserve Bank.

This district contains 687 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Minneapolis, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $4,702,925.

District No. 10.

The States of Kansas, Nebraska, Colorado, and Wyoming; all that part of Missouri not included in district No. 8, all that part of Oklahoma north of a line forming the southern boundary of the following counties; Ellis, Dewey, Blaine, Canadian, Cleveland, Pottawatomie, Seminole, Okfuskee, McIntosh, Muskogee, and Sequoyah; and all that part of New Mexico north of a line forming the southern boundary of the following counties; McKinley, Sandoval, Sante Fe, San Miguel, and Union, with the City of Kansas City, Mo., as the location of the Federal Reserve Bank.

This district contains 836 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Kansas City, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $5,590,015; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $5,620,977.

District No. 11.

The State of Texas, all that part of New Mexico not included in district No. 10; all that part of Oklahoma not included in district No. 10; all that part of Louisiana not included in district No. 6; and the following counties in the State of Arizona; Pima, Graham, Greenlee, Cochise, and Santa Cruz; with the City of Dallas Tex., as the location of the Federal Reserve Bank.

This district contains 731 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of Dallas, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $5,540,020; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which

have applied for membership up to April 1, 1914, the total capital stock will be $5,653,924.

District No. 12.

The States of California, Washington, Oregon, Idaho, Nevada, and Utah, and all that part of Arizona not included in district No. 11, with the City of San Francisco, Cal., as the location of the Federal Reserve Bank.

This district contains 514 national banks which have accepted the provisions of the Federal Reserve Act. The capital stock of the Federal Reserve Bank of San Francisco, on the basis of six per cent of the total capital stock and surplus of the assenting national banks in the district, will amount to $7,825,375; and if there be added six per cent of the capital stock and surplus of the state banks and trust companies which have applied for membership up to April 1, 1914, the total capital stock will be $8,115,494.

The committee was impressed with the growth and development of the States of Idaho, Washington, and Oregon, but on the basis of six per cent of the capital stock and surplus of national banks and state banks and trust companies, which have applied for membership, that section could not provide the $4,000,000 minimum capital stock required by the law. With the continued growth of that region it is reasonable to expect that in a few years the capital and surplus of its member banks will be sufficient to justify the creation of an additional Federal Reserve district, at which time application may be made to the Congress for a grant of the necessary authority.

It is no part of the duty of the organization committee to locate branches of the Federal Reserve Banks. The law specifically provides that "each Federal Reserve bank shall establish branch banks within the Federal Reserve district in which it is located." All the material collected by the committee will be placed at the disposal of the Federal Reserve banks and the Federal Reserve Board when they are organized and ready to consider the establishment of branch banks.

Reference is made to the Map of the Districts and to tables A, B, C, D, E, and F, hereto attached.

W. G. McADOO,
D. F. HOUSTON,
JNO. SKELTON WILLIAMS,
Reserve Bank Organization Committee.

Washington, D. C., April 2, 1914.

Boston
New York
Philadelphia
Richmond
Cleveland
Chicago
Atlanta
St. Louis
Minneapolis
Kansas City
Dallas
San Francisco
Map showing the
Location of the Twelve
Federal Reserve Banks
and the Boundaries of the
Twelve Federal Reserve Districts
as determined by the
Federal Reserve Organization Committee

Boston
New York
Philadelphia
Richmond
Cleveland
Atlanta
Chicago
St. Louis
Minneapolis
Kansas City
Dallas
San Francisco
Federal Reserve Districts

...8 A.—*Showing subscriptions to stock of Federal reserve banks by national banks, State banks, and trust companies, with area and population of each district.*

[Note 1.]

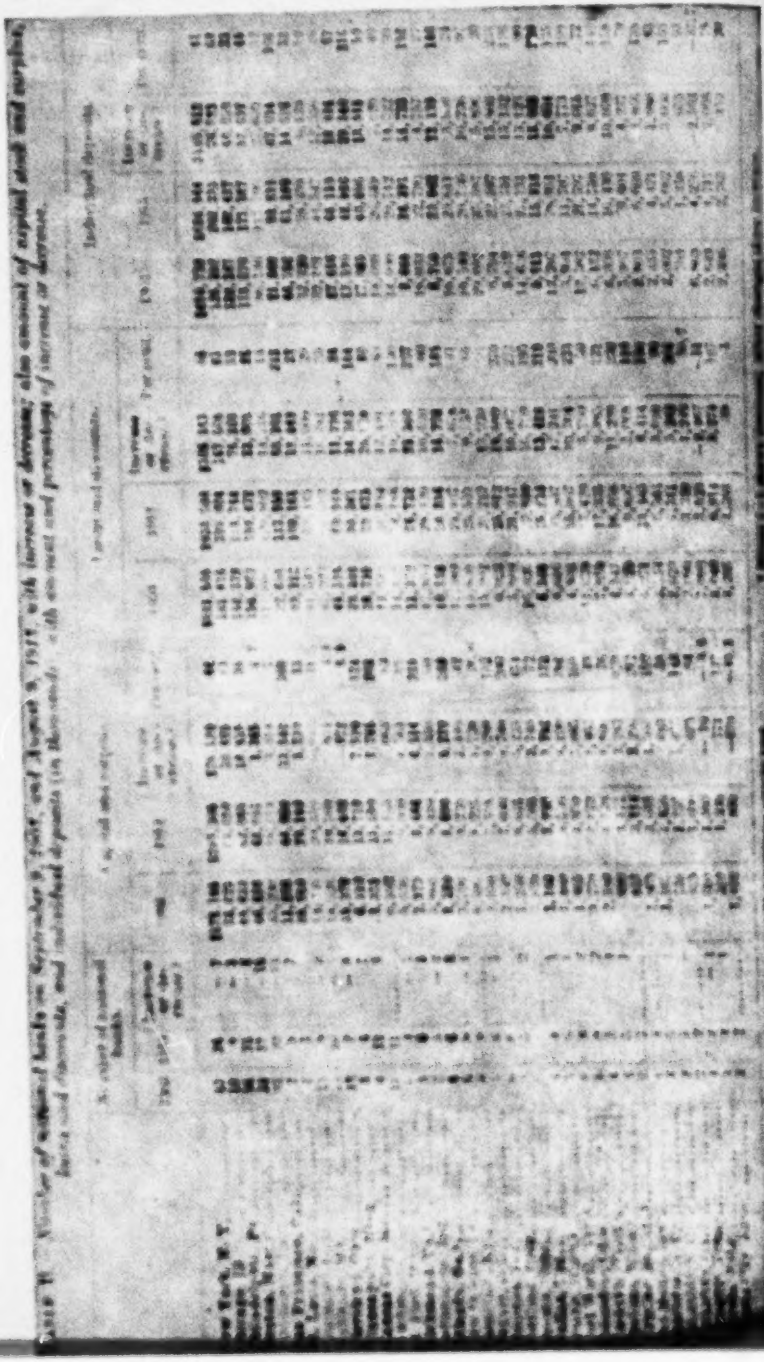
	Federal reserve cities	District		National banks March 4, 1914.			Including State banks and trust companies that have applied for membership up to April 1, 1914.		
		Land area in square miles.[1]	Population.[1]	Number of banks.	Capital and surplus.[2]	6 per cent subscription.	Number of banks.	Capital and surplus.	6 per cent subscription.
1	Boston	62,870	6,552,681	611	$165,670,945	$9,970,257	445	$185,409,942	$9,924,543
2	New York	27,430	11,113,614	877	343,000,437	20,621,026	476	344,793,437	20,687,606
3	Philadelphia	10,440	9,942,906	737	203,130,631	12,187,838	736	209,345,631	12,560,738
4	Cleveland	57,420	8,538,469	762	208,139,000	12,507,264	749	201,673,000	12,100,380
5	Richmond	121,920	9,349,519	675	101,655,000	6,099,300	684	109,045,222	6,542,713
6	Atlanta	178,470	9,827,360	522	77,312,735	4,641,163	552	79,273,971	4,756,438
7	Chicago	111,300	12,348,767	963	307,997,041	18,479,823	967	316,126,363	12,967,701
8	St. Louis	164,160	8,147,892	656	83,179,849	4,990,791	668	108,116,784	6,307,006
9	Minneapolis	483,200	5,197,888	697	79,302,991	4,702,933	697	79,302,991	4,702,933
10	Kansas City, Mo.	199,810	5,671,811	846	93,146,012	5,588,760	870	93,340,012	5,600,977
11	Dallas	419,170	5,387,913	734	97,332,673	5,840,360	757	94,332,673	5,659,960
12	San Francisco	158,360	5,090,...	514	130,422,995	7,825,379	529	135,209,731	8,115,484
	Total	2,053,000	91,372,200	7,671	1,760,203,291	107,116,157	7,644	1,931,189,490	109,908,980

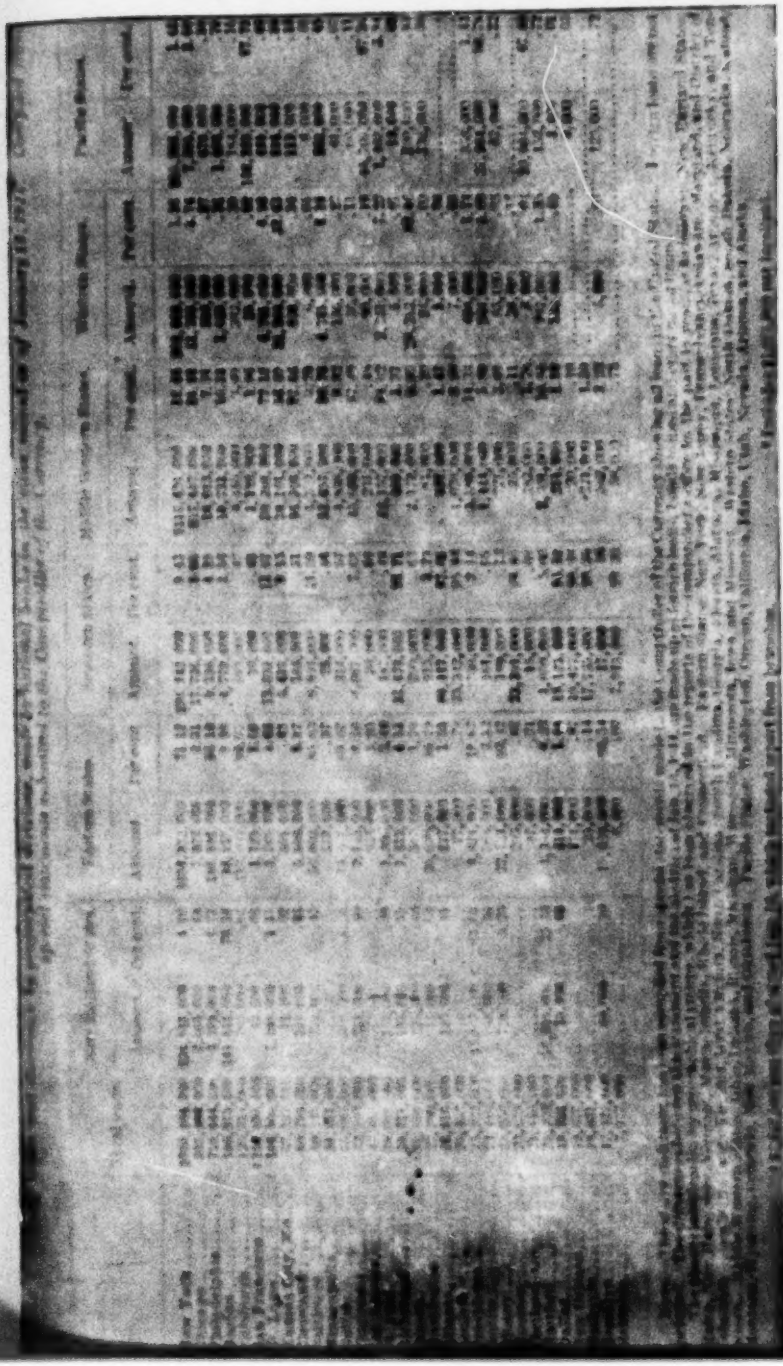
[1] United States census of 1910.

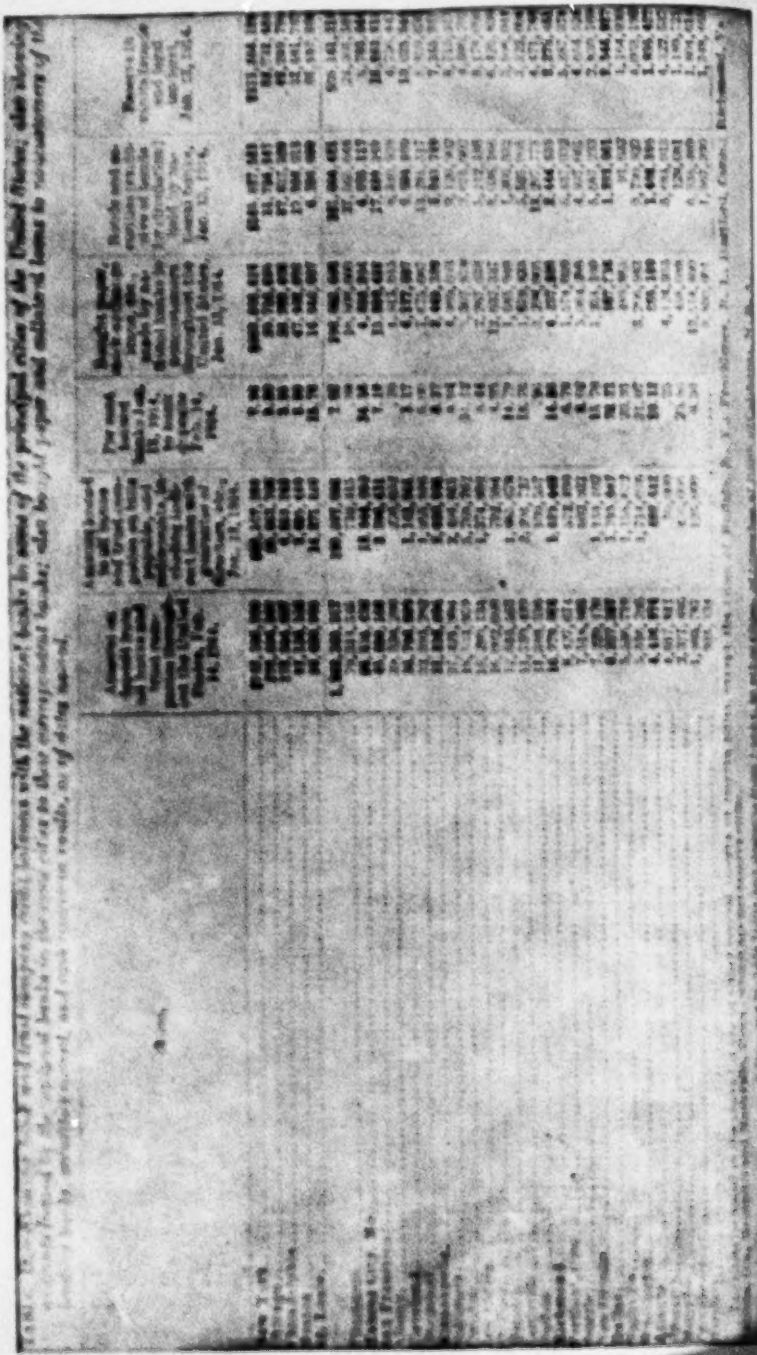
TABLE A.—*Showing amount due to and due from banks, amount of individual deposits and all deposits, also cash in vault, for all national banks in each Federal reserve district as of March 4, 1914.*

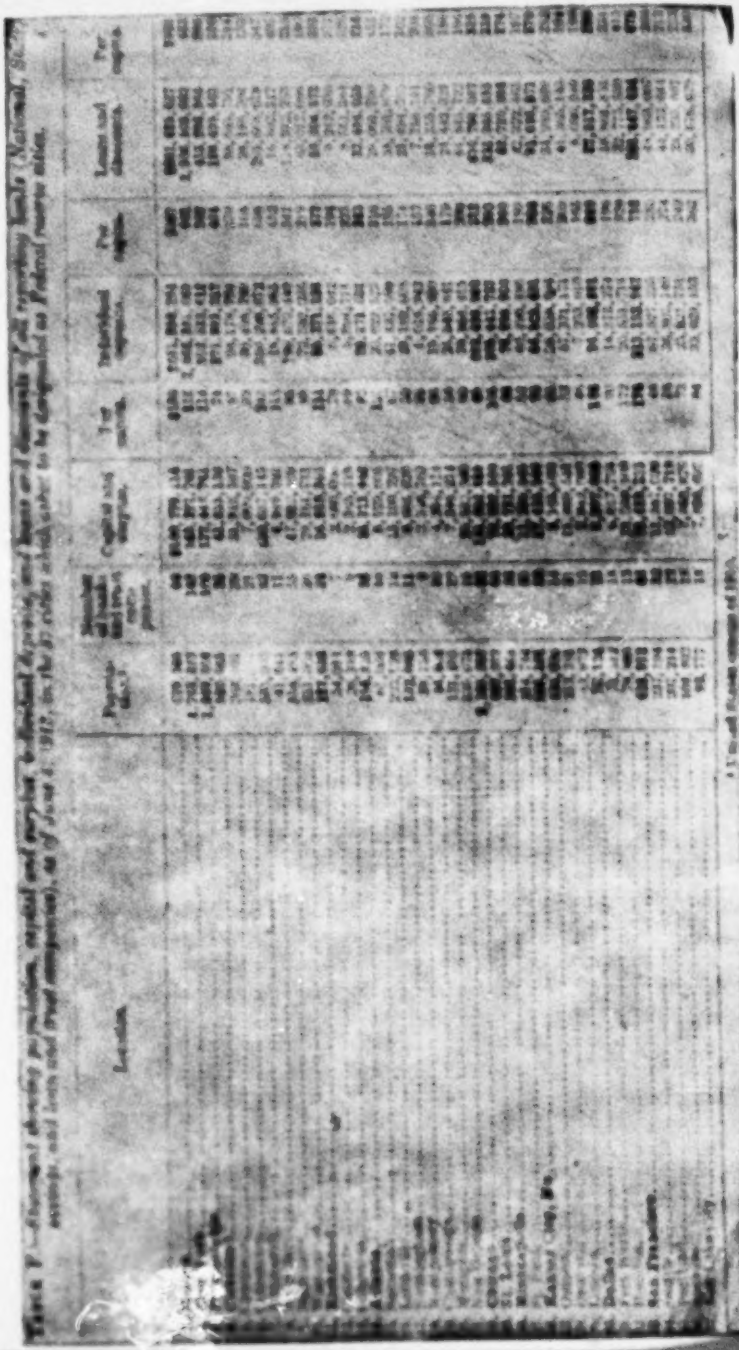
[PART 1.]

Number.	Federal reserve district.	Total due to banks.	Total due from banks.	Net balance due to banks.	Net balance due from banks.	Individual deposits.	All deposits.	Per capita deposit.	Cash in vault.
1	Boston	$125,263,128	$125,067,628	$ 977,495		9,[illegible]36,527	[illegible]21,35[illegible]974	[illegible]96	$52,[illegible]54
2	New York	868,410,795	197,[illegible]88,868	670,[illegible]47		1,[illegible]83,[illegible]79	2,[illegible]3[illegible]4[illegible]79	[illegible]28	339,[illegible]
3	Philadelphia	214,336,594	140,272,922	38,[illegible]2		718,185,019	[illegible]81,[illegible]46	119	77,[illegible]13
4	Cleveland	140,272,862	170,[illegible]02,705	18,441,755		8[illegible]4,9[illegible]8,827	[illegible]5[illegible],[illegible]85,[illegible]33	102	75,[illegible],[illegible]48
5	Richmond	79,903,[illegible]75	72,[illegible]83,[illegible]48		81,030,[illegible]77	[illegible]72,[illegible]40,[illegible]43	[illegible]08,[illegible]70,[illegible]41	[illegible]7	[illegible],[illegible],[illegible]94
6	Atlanta	70,[illegible]03,[illegible]11	61,[illegible]42,[illegible]28		21,[illegible]59,[illegible]33	[illegible]5,[illegible]14,[illegible]90	[illegible]2,[illegible]38,[illegible]14	[illegible]7	[illegible],[illegible],[illegible]17
7	Chicago	[illegible]41,[illegible]7[illegible],[illegible]90	[illegible]78,[illegible]61,[illegible]8[illegible]	[illegible]02,[illegible]76,[illegible]92		[illegible]1,[illegible]30[illegible],[illegible]74	1,[illegible]26[illegible],[illegible]08[illegible]	[illegible]02	[illegible],[illegible]14,[illegible]41
8	St. Louis	[illegible]31,[illegible]1[illegible],[illegible]49	92,[illegible]13,[illegible]94	[illegible]1,[illegible]32,[illegible]55		241,[illegible]40,[illegible]80	[illegible]78,[illegible]8[illegible],[illegible]0[illegible]	83	[illegible],[illegible],[illegible]1[illegible]
9	Minneapolis	[illegible]6,[illegible]7,[illegible]43	[illegible]9[illegible],[illegible]73,[illegible]30		[illegible]1,[illegible]32,[illegible]27	[illegible]9[illegible],[illegible]08,[illegible]30[illegible]	[illegible]7[illegible],[illegible]04,[illegible]9[illegible]	[illegible]92	[illegible],[illegible]9[illegible]
10	Kansas City, Mo.	[illegible]66,[illegible]47,[illegible]62	[illegible]31,[illegible]28,[illegible]29	12,[illegible]0[illegible],[illegible]63		[illegible]6[illegible],[illegible]9[illegible],[illegible]89	[illegible]7[illegible],[illegible]74,[illegible]35	[illegible]92	[illegible]1,[illegible],[illegible]86
11	Dallas	38,[illegible]77,[illegible]56	79,[illegible]43,[illegible]39[illegible]		26,[illegible]1[illegible],[illegible]77	2[illegible],[illegible]9[illegible],[illegible]0[illegible]	[illegible]0,[illegible]30,[illegible]72	[illegible]6	[illegible],[illegible]79,[illegible]25
12	San Francisco	1[illegible],[illegible]8[illegible],[illegible]41	[illegible]2[illegible],[illegible]07,[illegible]44[illegible]	[illegible]	2,[illegible]49,[illegible]92	[illegible]14,[illegible]74,[illegible]1[illegible]	[illegible]1,[illegible]0[illegible]	[illegible]17	[illegible],[illegible],[illegible]88
	Total	2,[illegible]72,[illegible]43,[illegible]96	1,[illegible]24,[illegible]1[illegible],[illegible]97	[illegible]21,[illegible]0[illegible],[illegible]49	[illegible]70,[illegible]11,[illegible]51	9,[illegible]0[illegible],[illegible]24,[illegible]11	[illegible],[illegible]4[illegible],[illegible]19[illegible]	[illegible]91	[illegible],[illegible],[illegible]17,[illegible]95









Government's Exhibit 3.

C. Organization Division Form No. 1998 No. 10262

Treasury Department
Office of
Comptroller of the Currency.

Washington, D. C., September 16, 1912.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that "The Liberty National Bank of Tulsa" in the City of Tulsa in the County of Tulsa and State of Oklahoma has complied with all the provisions of the statutes of the United States, required to be complied with before an association shall be authorized to commence the business of banking:

Now, therefore, I, Willis J. Fowler, Deputy and Acting Comptroller of the Currency, do hereby certify that "The Liberty National Bank of Tulsa" in the City of Tulsa in the County of Tulsa and State of Oklahoma is authorized to commence the business of banking as provided in section fifty-one hundred and sixty-nine of the Revised Statutes of the United States.

In Testimony Whereof, witness my hand and seal of office this Sixteenth day of September, 1912.

(Seal) WILLIS J. FOWLER,
Deputy and Acting Comptroller of the Currency.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, Henry M. Dawes, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original certificate of Willis J. Fowler, Deputy and Acting Comptroller, authorizing "The Liberty National Bank of Tulsa," Tulsa, Oklahoma (chapter Number 10262), to commence the business of banking, and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of aWshington

and District of Columbia, this twenty-fifth day of August, A. D. 1924.

(Seal) HENRY M. DAWES,

C.B.P. J.O.L. Comptroller of the Currency.

Form 1980 8-13-23-600 Gov. Ex. No. 3

Government's Exhibit 4.

Treasury Department
Office of Comptroller of the Currency.
Form 1903.—Ed. July 29-10-1,000
Organization Certificate
(Executed in Duplicate.)

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an Association for carrying on the business of banking, under the laws of the United States, do make and execute the following Organization Certificate:

First. The title of the Association shall be "The Liberty National Bank of Tulsa."

Second. The said Association shall be located in the City of Tulsa, County of Tulsa, and State of Oklahoma, where its operations of discount and deposit are to be carried on.

Third. The Capital Stock of this Association shall be $100,000.00, One Hundred Thousand Dollars, and shall be divided into 1000 shares of one hundred dollars each.

Fourth. The name, financial worth, net, and the residence of each shareholder of this Association, with the number of shares held, are as follows:

	Name	Financial Worth Net	Residence	No. of Shares
1	A. E. Lewis	$ 60,000.00	Tulsa, Okla.	300
2	C. A. Mayo	50,000.00	"	100
3	E. A. Ross	100,000.00	"	365
4	H. N. Greis	40,000.00	"	60
5	Robert B. Mitchell	2,000.00	"	10
6	C. A. Sanderson	35,000.00	"	20
7	N. W. Mayginnes	30,000.00	"	10
8	E. D. Mitchell	50,000.00	"	10
9	C. E. Suppes	50,000.00	"	100
10	G. W. Lewis	30,000.00	Stillwater, Okla.	20
11	W. L. Lewis	5,000.00	Tulsa, Okla.	5
				1000

Fifth. This Certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In Witness Whereof, we have hereunto set our hands, this 13th day of September, 1912.

(To be signed and acknowledged by those who have signed the Articles of Association.)

1 A. E. Lewis
2 E. A. Ross
3 H. N. Gries
4 C. A. Sanderson
5 Robert B. Mitchell

(Acknowledgment must be made before Judge of Court or Notary Public.)

State of Oklahoma,
County of Tulsa—ss.

Before the undersigned, a notary public of Tulsa County, personally appeared A. E. Lewis, E. A. Ross, C. A. Sanderson, H. N. Greis and Robert B. Mitchell, to me well known, who severally acknowledged that they executed the foregoing Certificate for the purposes therein mentioned.

Witnss my hand and seal of office this 13th day of September, 1912. M. V. Eadman. (Seal) My Com Ex. 10-26-15.

No. 10262

Organization Certificate of the Liberty National Bank of Tulsa, Oklahoma.

Certificate for Certified Copy

Treasury Department. Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Organization Certificate of The Liberty National Bank of Tulsa, Tulsa, Oklahoma (Charter No. 10262), and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these pres-

ents at the Treasury Department, in the City of Washington and District of Columbia, this 13th day of May, A. D. 1925.

(Seal) J. W. McINTOSH,

N.M.H. J.O.L. Comptroller of the Currency.

Form 1980 3-23-25-500 Gov. Ex. 4—1-22-26

Government's Exhibit No. 5.

Form 1904 Ed. June 23-11—1,000

Treasury Department

Office of Comptroller of the Currency

Articles of Association

(Executed in duplicate)

For the purpose of organizing an Association to carry on the business of banking, under the laws of the United States, the undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of Association:

First. The title of this Association shall be "The Liberty National Bank of Tulsa.

Second. The place where its banking house or office shall be located, and its operations of discount and deposit carried on, and its general business conducted, shall be the City of Tulsa, State of Oklahoma.

Third. The Board of Directors shall consist of not less than five nor more than nine shareholders, and the following persons, A. E. Lewis, E. A. Ross, C. A. Sanderson, H. N. Greis and N. W. Mayginess are hereby appointed Directors of this Association to hold their offices as such until the regular annual election takes place, pursuant to the 4th article of these Articles of Association.

Fourth. The regular annual meetings of the shareholders for the election of Directors shall be held at the banking house of this Association on the second Tuesday of January of each year; but if no election shall be held on that day, it may be held on any other day according to the provisions of section 5149 of the Revised Statutes of the United States, and all elections shall be held according to such regulations as may be prescribed by the Board of Directors, not inconsistent with the provisions of the National Banking Law, and of these articles.

Fifth. The capital stock of this Association shall be $100,000.00, One Hundred Thousand Dollars, divided into shares of one hundred dollars each; but the capital may, with the approval of the Comptroller of the Currency, be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of an Act of Congress approved May 1, 1886; and in case of the increase of the capital of the Association, each shareholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The Board of Directors, a majority of whom shall be a quorum to do business, shall elect one of its members President of this Association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds vote of all the members of the Board) for the term for which he was elected a Director. The Directors shall have power to elect a Vice President, who shall also be a member of the Board of Directors, and who shall be authorized, in the absence or inability of the President from any cause, to perform all acts and duties pertaining to the office of President except such as the President only is authorized by law to perform, and to elect or appoint a Cashier, and such other officers and clerks as may be required to transact the business of the Association; to fix the salaries to be paid to them, and continue them in office, or to dismiss them, as, in the opinion of a majority of the Board, the interests of the Association may demand.

The Directors shall have power to define the duties of the officers and clerks of the Association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of Directors shall be held, and to appoint judges of the elections; to make all by-laws that it may be proper for them to make, not inconsistent with law, for the general regulation of the business of the Association and the management of its affairs and generally to do and perform all acts that it may be legal for a Board of Directors to do and perform under the Revised Statutes aforesaid.

Seventh. This Association shall continue for the period of twenty years from the date of the execution of its Organization Certificate, unless sooner placed in voluntary liquidation by the act of its stockholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth. These articles of Association may be changed or amended at any time by shareholders owning a majority of the

stock of the Association, in any manner not inconsistent with law; and the Board of Directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In Witness Whereof, we have hereunto set our hands, this 13th day of September, 1912.

(To be signed by at least five natural persons, comprising a majority of the applicants.)

1 A. E Lewis
2 E. A. Ross
3 H. N. *Bries*
4 C. A. Sanderson
5 Robert B. Mitchell

(Indorsed on the back thereof appears:) No. .... No. 1. Articles of Association of The Liberty National Bank of Tulsa, Oklahoma. Gov. Ex. No. 5 1-22-26.

Government's Exhibit 6.

Treasury Department

Office of Comptroller of the Currency

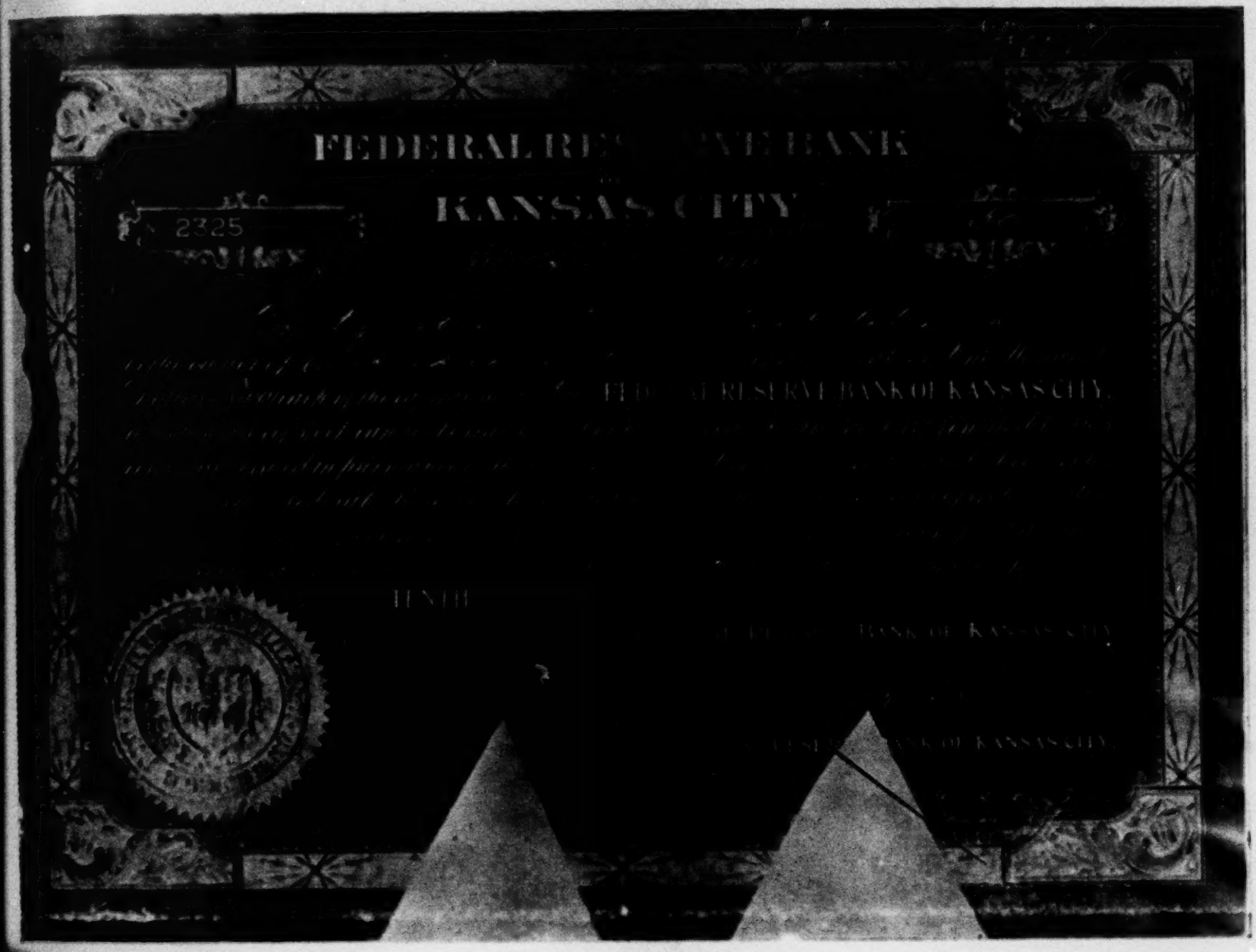
Organization.—Form 1918.—Ed. May 11-11 1,000

Certificate of Payment of Capital Stock and Compliance With Legal Requirements.

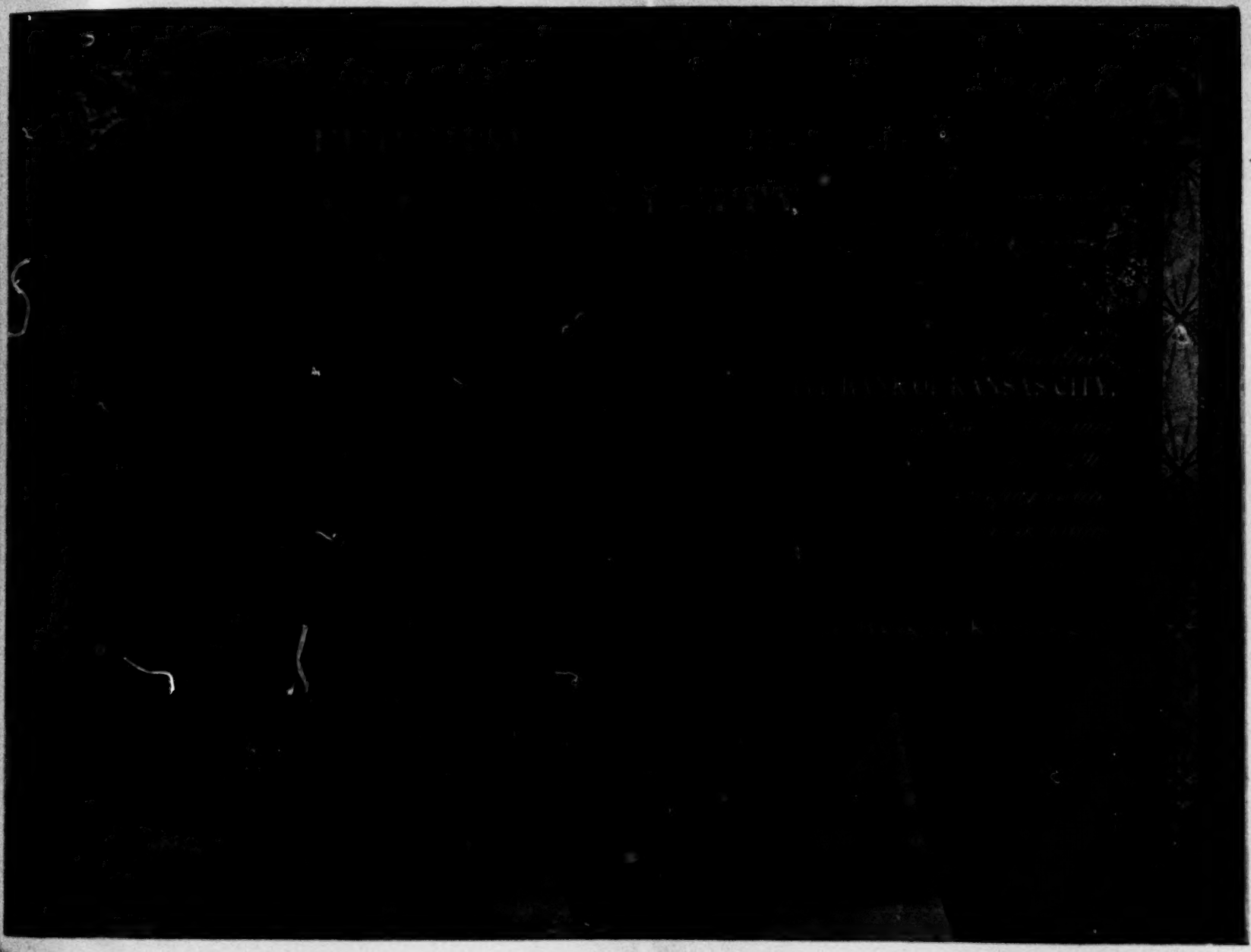
Tulsa, Oklahoma, Sept. 13th, 1912.

The undersigned officers and directors of The Liberty National Bank of Tulsa, located at Tulsa, Oklahoma, now organizing under the provisions of the Revised Statutes of the United States authorizing the organization of national banking associations, do hereby certify that of the authorized capital stock of $100,000.00 there has been paid into said bank, in cash, as permanent capital, $50,000.00, exclusive of any payments on surplus, and that no part of this sum is represented by promissory notes or other evidences of debt; and that each shareholder has individually paid in cash fifty per cent of his stock subscription; also, that the name and place of residence of each director, and the amount of stock individually owned in good faith, are as follows:

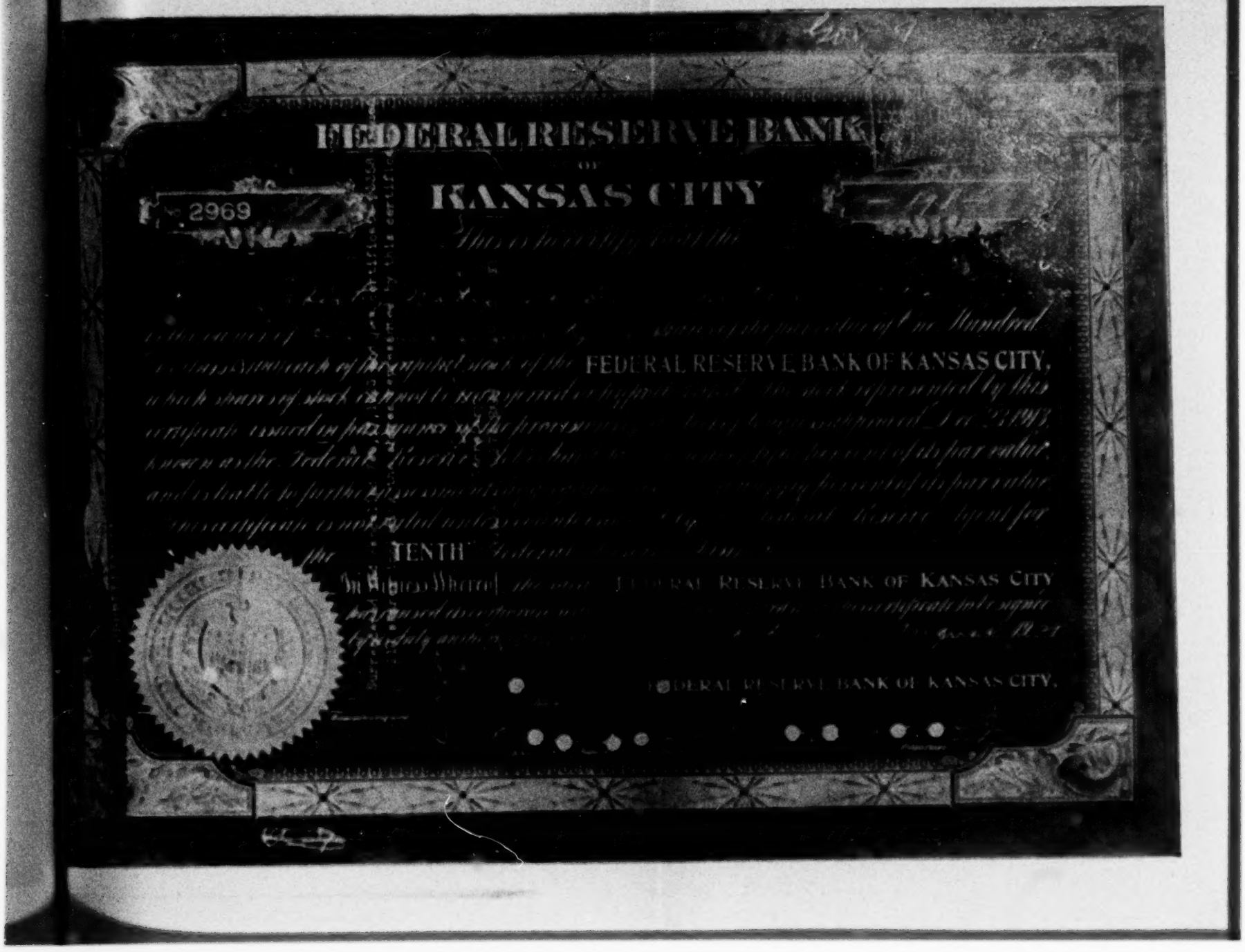
Government's Exhibit No. 7.



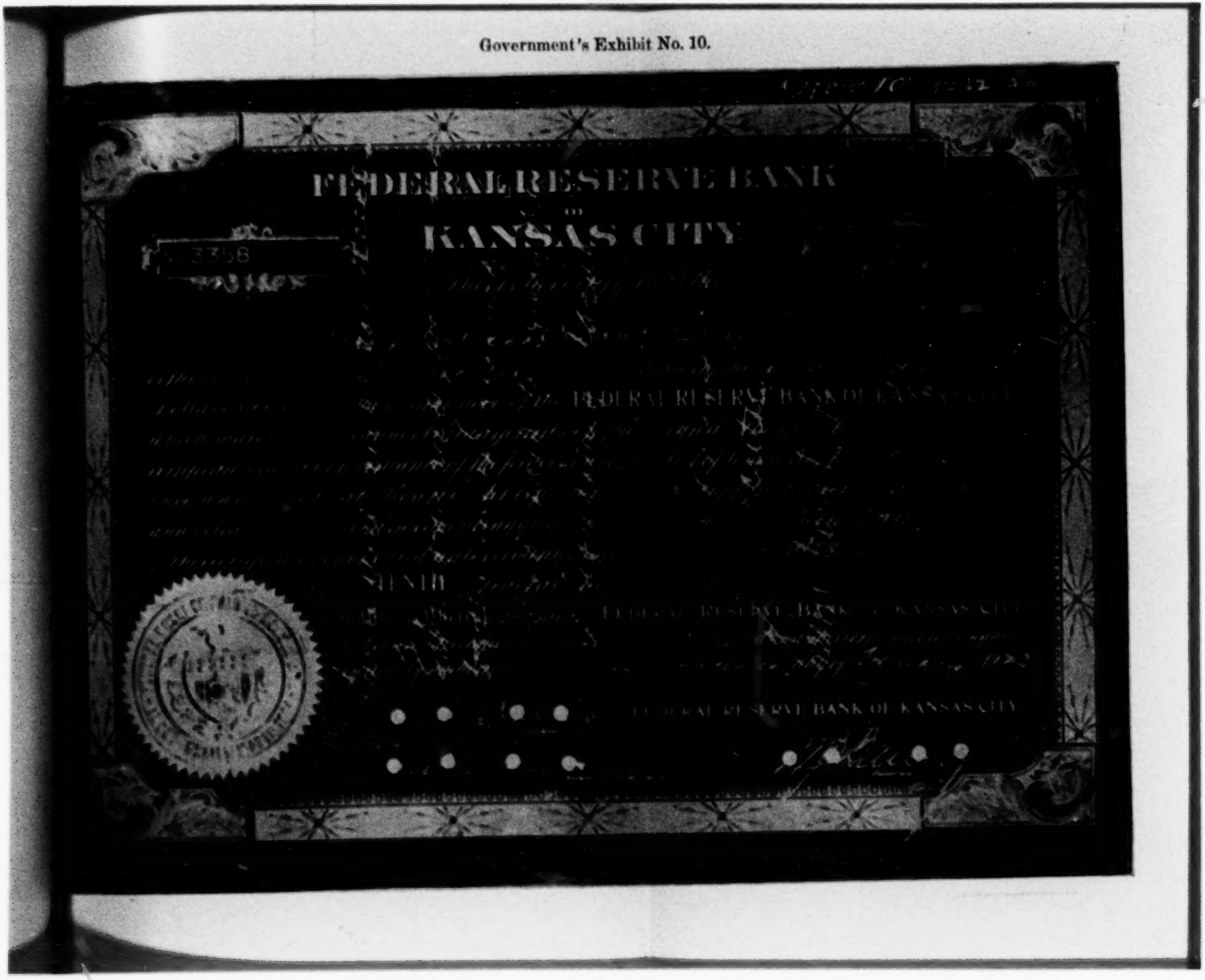
Government's Exhibit No. 8.



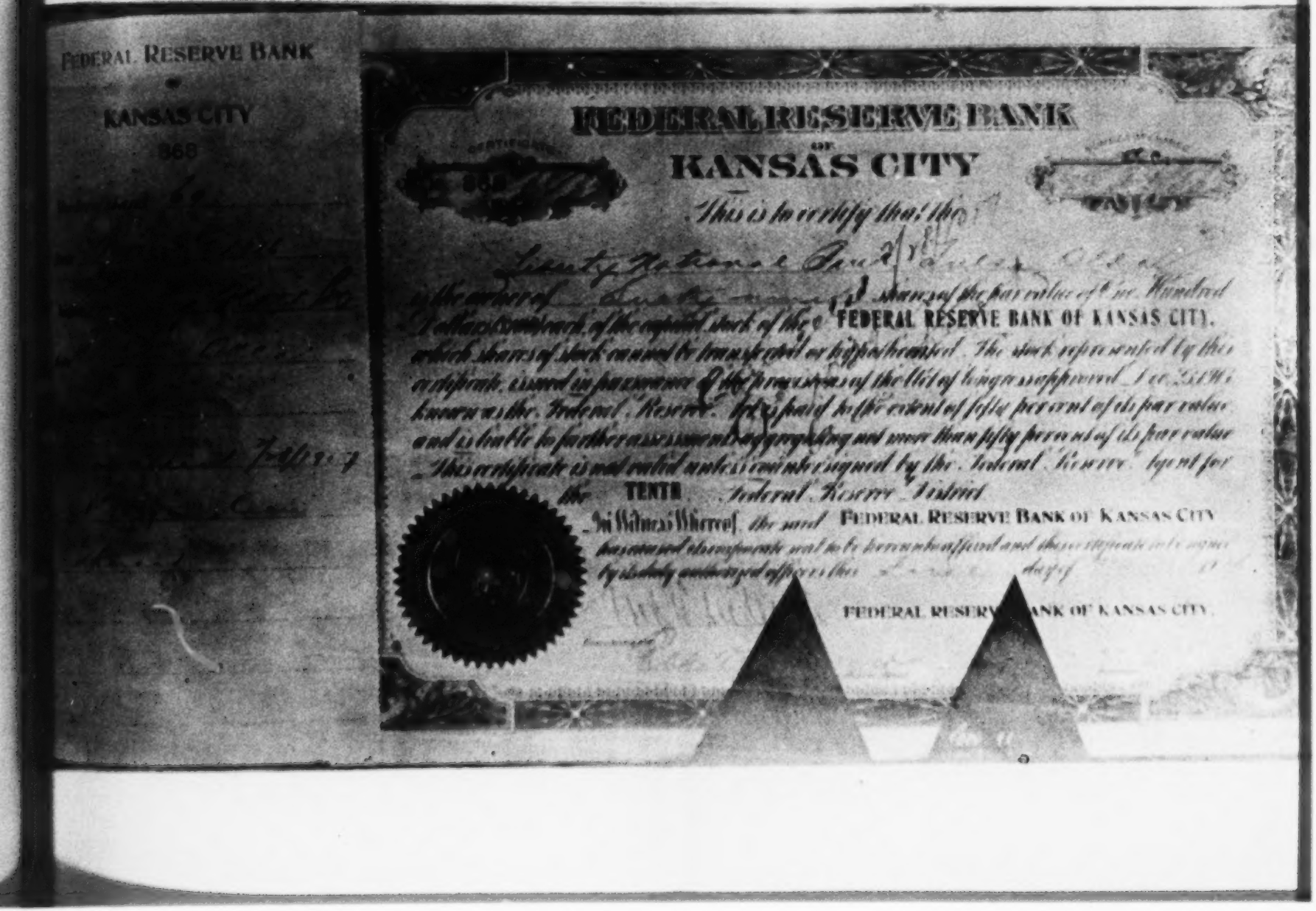
Government's Exhibit No. 9.



Government's Exhibit No. 10.



Government's Exhibit No. 11.



FEDERAL RESERVE BANK

KANSAS CITY

FEDERAL RESERVE BANK
OF
KANSAS CITY

This is to certify that the

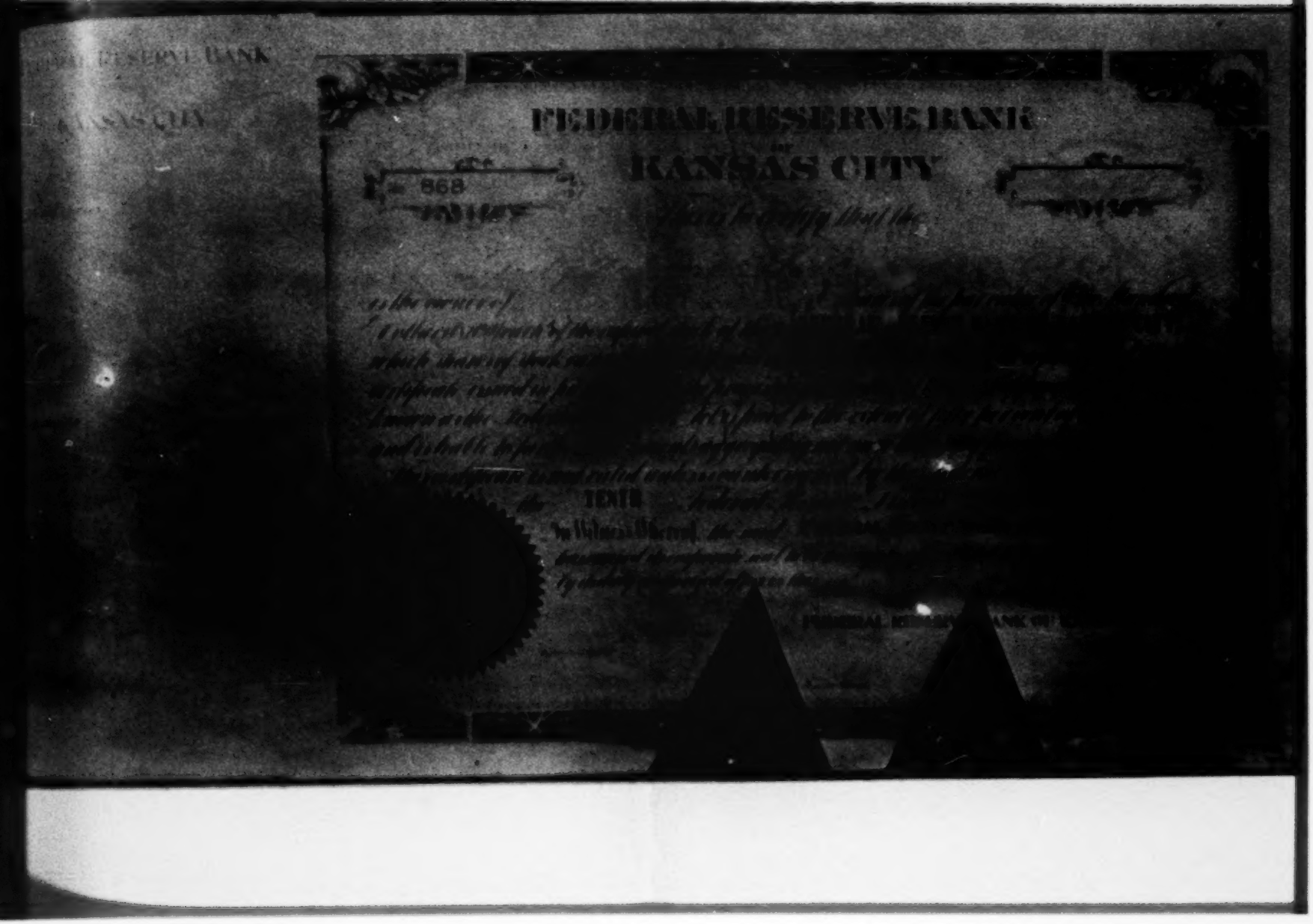
County National Bank

of the owner of 1 shares of the par value of One Hundred
Dollars each, numbered of the capital stock of the FEDERAL RESERVE BANK OF KANSAS CITY,
which shares of stock are not to be transferred or hypothecated. The stock represented by this
certificate is issued in pursuance of the provisions of the Act of Congress approved Dec. 23, 1913,
known as the Federal Reserve Act, and is subject to the conditions of said Act and to the
regulations of the Federal Reserve Board. It is paid to the extent of fifty per cent of its par value
and is liable for further assessment by ordering and more than fifty per cent of its par value.
This certificate is not valid unless countersigned by the Federal Reserve Agent for
the TENTH Federal Reserve District.

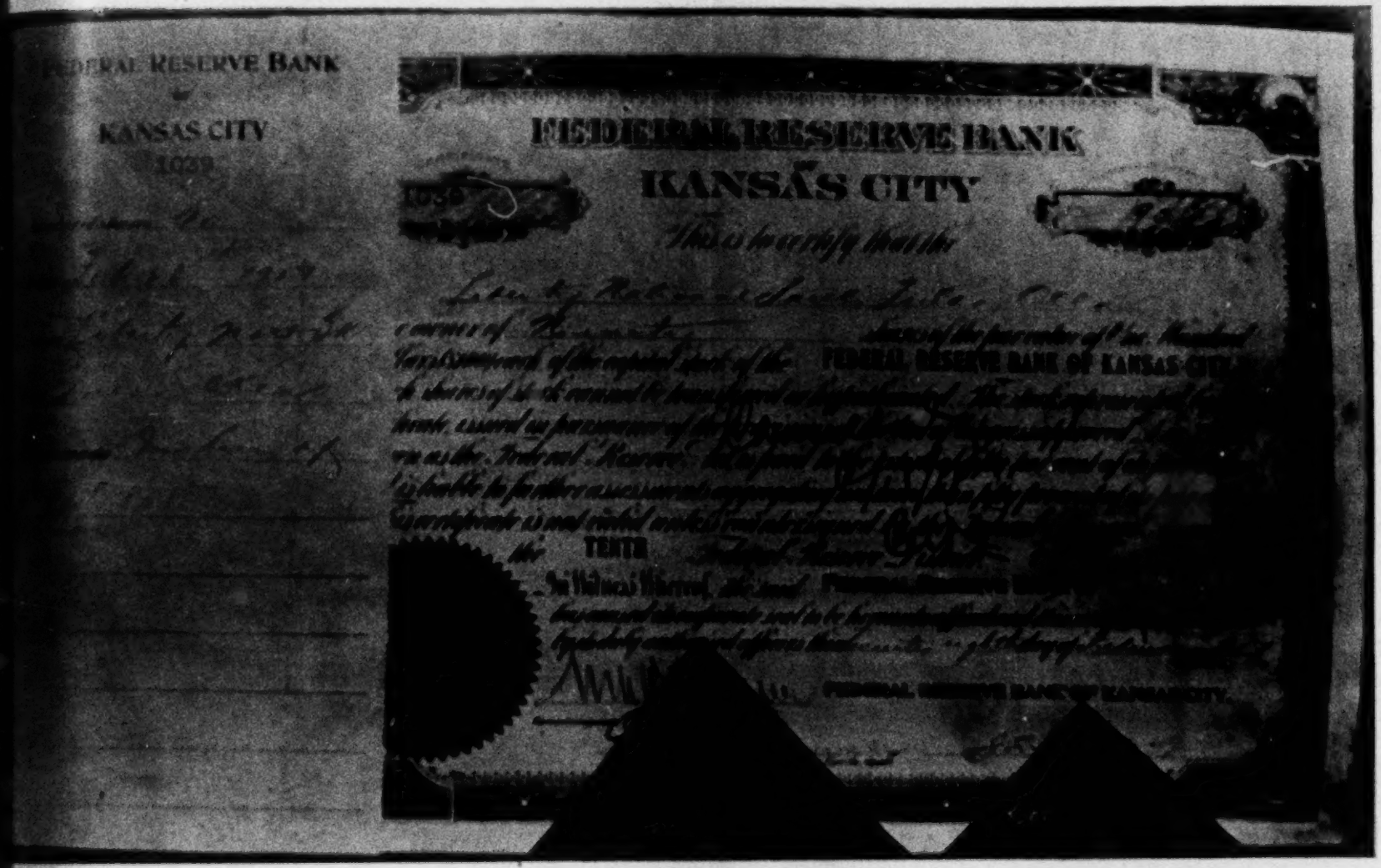
In Witness Whereof, the said FEDERAL RESERVE BANK OF KANSAS CITY
has caused these presents to be hereunto affixed and these signatures to be signed
by its duly authorized officers this day of

FEDERAL RESERVE BANK OF KANSAS CITY.

Government's Exhibit No. 12.



Government's Exhibit No. 13.



Government's Exhibit No. 14.

RVE BANK

KANSAS CITY
1575
93
June 15-18
Liberty Nat'l Bank
Tulsa Okla
In lieu of
Cert # 1024
90 Shares
Cancelled 7-1-69
Cert # 1858 Issued

FEDERAL RESERVE BANK
OF
KANSAS CITY

1575

This is to certify that the

Liberty Natl Bank Tulsa Okla

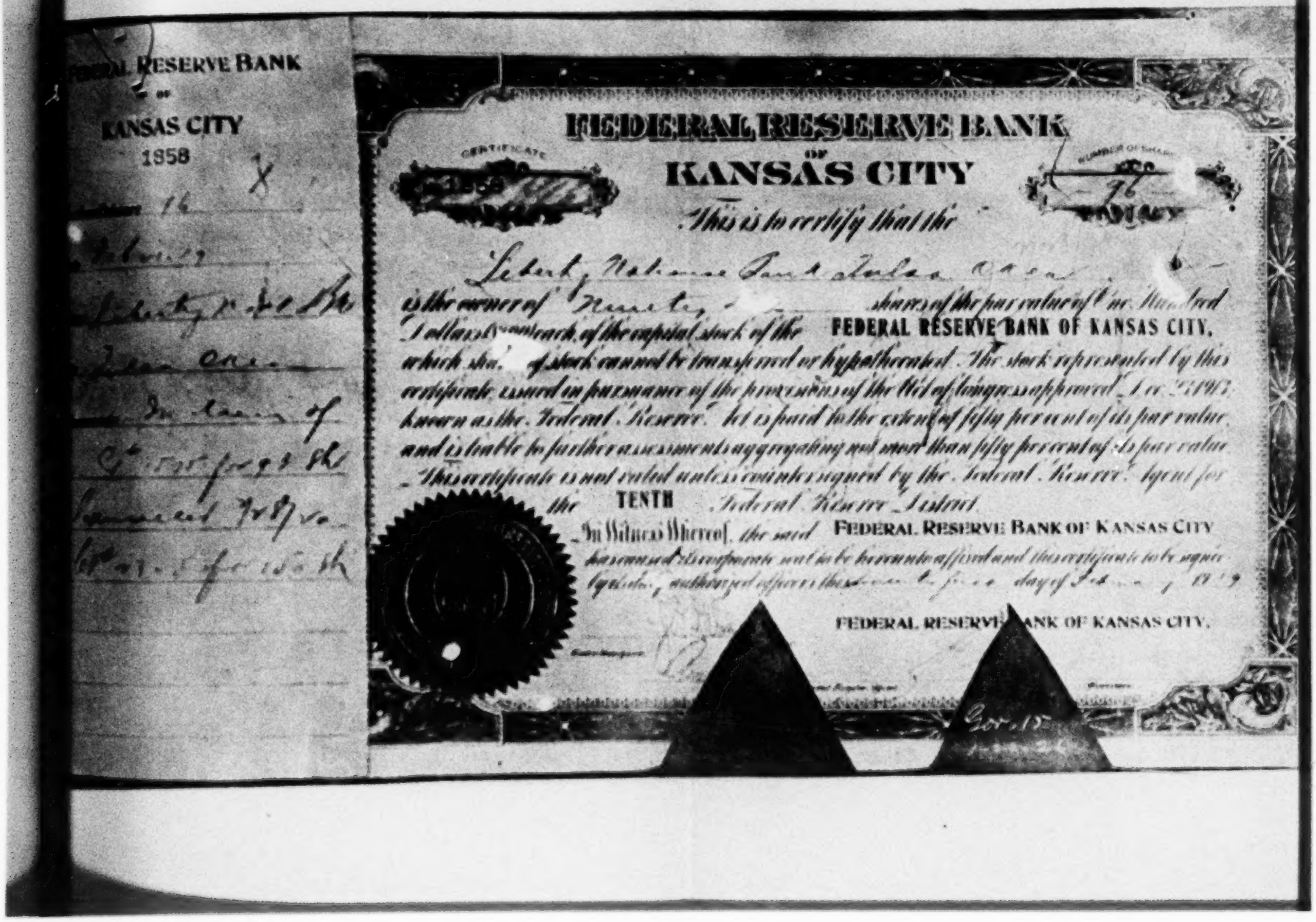
is the owner of Ninety Three — shares of the Capital Stock of the Federal Reserve Bank of Kansas City,

transferable on the books of the Bank by the owner hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. The ownership of this stock is subject to the provisions of the Federal Reserve Act and Regulations of the Board of Governors of the Federal Reserve System.

IN WITNESS WHEREOF the said Federal Reserve Bank of Kansas City has caused this certificate to be signed by its duly authorized officers this 1st day of June 1941

FEDERAL RESERVE BANK OF KANSAS CITY.

Government's Exhibit No. 15.



FEDERAL RESERVE BANK
OF
KANSAS CITY

FEDERAL RESERVE BANK
OF
KANSAS CITY

This is to certify that the

is the owner of shares of the par value of One Hundred Dollars each of the capital stock of the FEDERAL RESERVE BANK OF KANSAS CITY, which the shares of stock cannot be transferred or hypothecated. The stock represented by this certificate is issued in pursuance of the provisions of the Act of Congress approved December 23, 1913, known as the Federal Reserve Act, is paid to the extent of fifty per cent of its par value, and is liable for further assessments aggregating not more than fifty per cent of its par value.

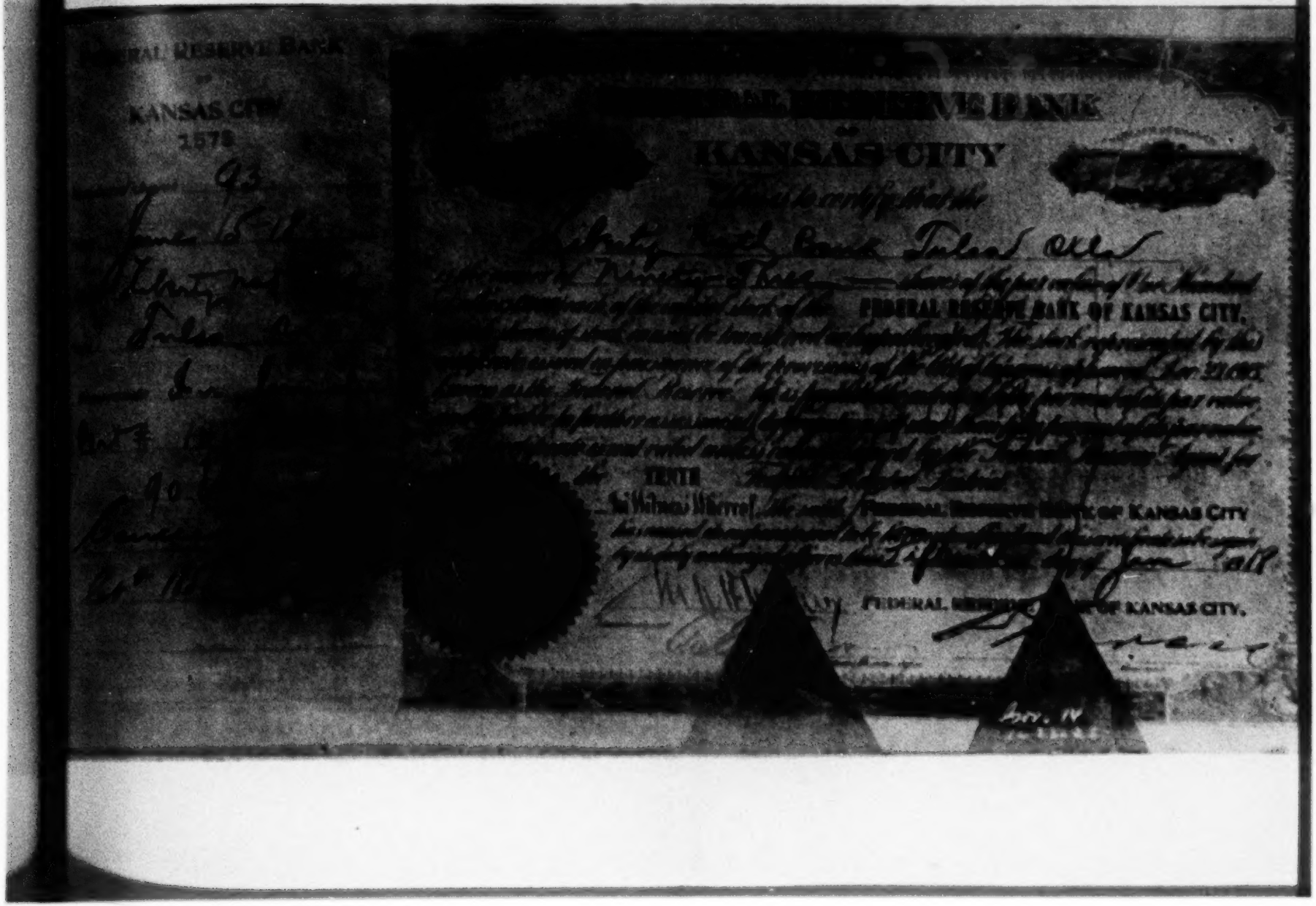
This certificate is not valid unless countersigned by the Federal Reserve Agent for the TENTH Federal Reserve District.

In Witness Whereof, the said FEDERAL RESERVE BANK OF KANSAS CITY has caused its corporate seal to be hereunto affixed and this certificate to be signed by its duly authorized officers this fifteenth day of December, 1919.

FEDERAL RESERVE BANK OF KANSAS CITY.

Gov. 15

Government's Exhibit No. 16.



(The names, but not the signatures, of all directors should appear on this page.)

	Name of Director	Place of Residence (Town or City and State)	No. of Shares of Stock
1	A. E. Lewis	Tulsa, Oklahoma	300
2	E. A. Ross	"	365
3	C. A. Sanderson	"	20
4	H. N. Greis	"	60
5	N. W. Mayginess	"	10

(A majority of the directors, exclusive of President or Cashier, must sign and make acknowledgment on this page.)

It is further certified that the association has in good faith complied with all of the provisions that are required to be complied with before receiving authority to commence the business of banking.

E. A. ROSS,
H. N. GREIS,
C. A. SANDERSON,
Directors.
A. E. LEWIS,
President,
Cashier.

State of Oklahoma,
County of Tulsa—ss.

Before the undersigned, a notary public of Tulsa County, Okla., personally appeared the above-named directors and other officers of the aforesaid national bank, and made oath that the foregoing certificate and the matters and things therein set forth are true to the best of their knowledge and belief.

Witness my hand and seal of office this 13th day of Sept., 1912. M. V. Cadman. (Seal) My Com. Ex. 10-26-1915.

(Indorsed upon the back of said certificate appears:) No. .... Certificate of Payment of Capital Stock, etc., of The Liberty National Bank of Tulsa, Oklahoma. Gov. Ex. 6.

Govt's Ex. 24.

$17,500.00 TULSA, OKLAHOMA June 6th 1923

- - NINETY DAYS - - - AFTER DATE I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - SEVENTEEN THOUSAND FIVE HUNDRED & NO/100- - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM MATURITY TIME RATE OF 8th PER CENT PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE _____ Simon W Brown

P. O. _____

No. 20190 _____

(Endorsed on back:) 9-25-23—Inst pd to 12/4-23. (Cancelled revenue stamps.) 23+4=27 dys.

(Endorsed on back:) 9-25-23—Inst pd to 12/4-23. (Can-
celled revenue stamps.) 23+4=27 das.

Govt's Ex. 25.
(Showing endorsements on back.)

$23,313.72 TULSA, OKLA., May 19th, 1923

- - SIXTY DAYS- - - after date, I, we or either of us, promise to pay

THE LIBERTY NATIONAL BANK, of TULSA, OKLAHOMA

or order, at its office in Tulsa, Oklahoma

- - - -TWENTY-THREE THOUSAND THREE HUNDRED THIRTEEN & 72/100- - - - DOLLARS

For value received, with interest from ~~date~~ at the rate of ~~six~~ per cent. per annum. The undersigned hereby pledge and deposit with said bank as collateral security (being the legal holder) for the payment hereof, and also for all other present or future demands or claims of any kind of the said bank against the undersigned, due or not due

Four Hundred Thirty-two (432) Shares of Sinclair Oil Company

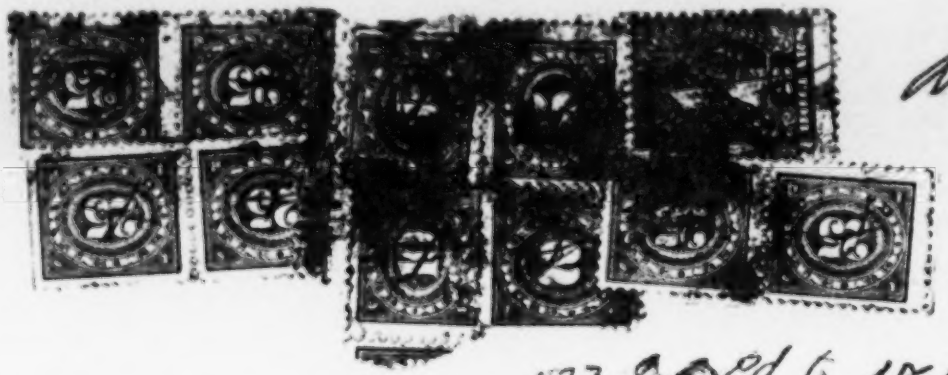
at option of said bank or its assigns (and with the right to said bank or its assigns to be the purchaser of all or any part of said collateral at any such sale), in case of non-performance of this promise, applying the net proceeds to the payment of this note, including interest, and accounting for the surplus if any, and in case of deficiency promise to pay said bank, or its order, the amount thereof forthwith after such sale, with interest as provided above, and in case of any exchange of, or additions to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals. The margin of collaterals to be kept satisfactorily to said bank, or, in default thereof, this note to become due and payable. (All dividends and maturing coupons pending life of this loan shall be paid to holder of this note.) The makers and endorsers hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and agree that extensions of time for payment may be granted by the holders hereof without notice. In case of legal proceedings to collect this note, or in case this note is handed to an attorney for collection, I, we, or either of us agree to pay 10 per cent. of the total amount named herein, additional, as attorney's fees.

Due 10-1-23

No 20057

O K R&P

J W McDonnell



Rec'd Payment

Stamped 6 10-1-23

(Stamped on face of note:) Paid June 24, 1924. Security National Bank, Tulsa, Oklahoma.

Govt's Ex. 26.

Dan Coy #45

$5,000.00 40 TULSA, OKLAHOMA, JUNE 14th 19 23

---- ON DEMAND ---- AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

---- FIVE THOUSAND & NO/100 ---- DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM Date AT THE RATE OF 8 PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE

P. O. 6-5-3

NO. 22217

(Endorsed on back:) The Liberty Bank, Tulsa, by R. C. Lamprich. (Cancelled revenue stamp.)

28 UNITED STATES OF AMERICA. 977

Govt's Ex. 27.

25 - 28 (~~Govt Ex #55~~)

$10,000.00 TULSA, OKLAHOMA September 16th, 1923.

- - - - - NINETY DAYS - - - - - AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - - - - TEN THOUSAND & NO/100 - - - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM date AT THE RATE OF [illegible] PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREOF SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT HEREIN MEDIUM, ADDITIONAL, AS ATTORNEY'S FEES.

DUE 12-15-23

P. O. 04017

NO. ---

Wm. O. Bohnefeld

---

678 ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS

PAY TO THE ORDER OF THE FEDERAL
RESERVE BANK, KANSAS CITY, MISSOURI

THE LIBERTY NATIONAL BANK,
TULSA, OKLAHOMA,

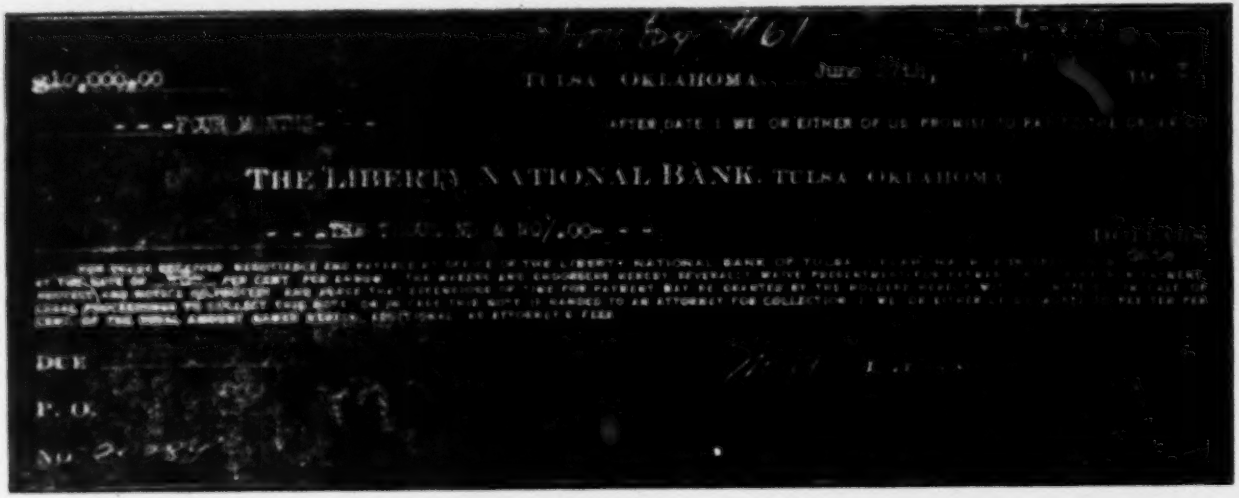
BY [signature]
CASHIER.

The Liberty National Bank Tulsa, Okla.
By [signature]
Cashier

(On back of Government's Exhibit 27:)

(Federal Reserve clearing-house stamps on back not shown in photographic reproduction.)

Govt's Ex. 28.



(Endorsed on back:) The Liberty National Bank, Tulsa, Okla. By R. C. Lamprich, Cashier. (Cancelled revenue stamp.)

Govt's Ex. 29.

Dan by 64

$20,000.00 91 TULSA, OKLAHOMA. August 27th 1923.

- - - - SIXTY DAYS - - - - AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - - - - - - TWENTY THOUSAND & NO/100 - - - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM_____ AT THE RATE OF_____ PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE 11-27-23

P. O.

NO. V0519 G-133

LINCOLN COMPANY, INC.,

BY R. C. Lamprich

Secy-Treas.

(Endorsed on back:) The Liberty National Bank, by R. C. Lamprich, Cashier. (Cancelled revenue stamps.)

Govt's Ex. 30.

95 Govt Ex #463 42

$ 33,000.00 TULSA, OKLAHOMA, May 24th, 1923

---ON DEMAND--- AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

---THIRTY-THREE THOUSAND & 00/100--- DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM July 24 AT THE RATE OF ---- PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT% OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE

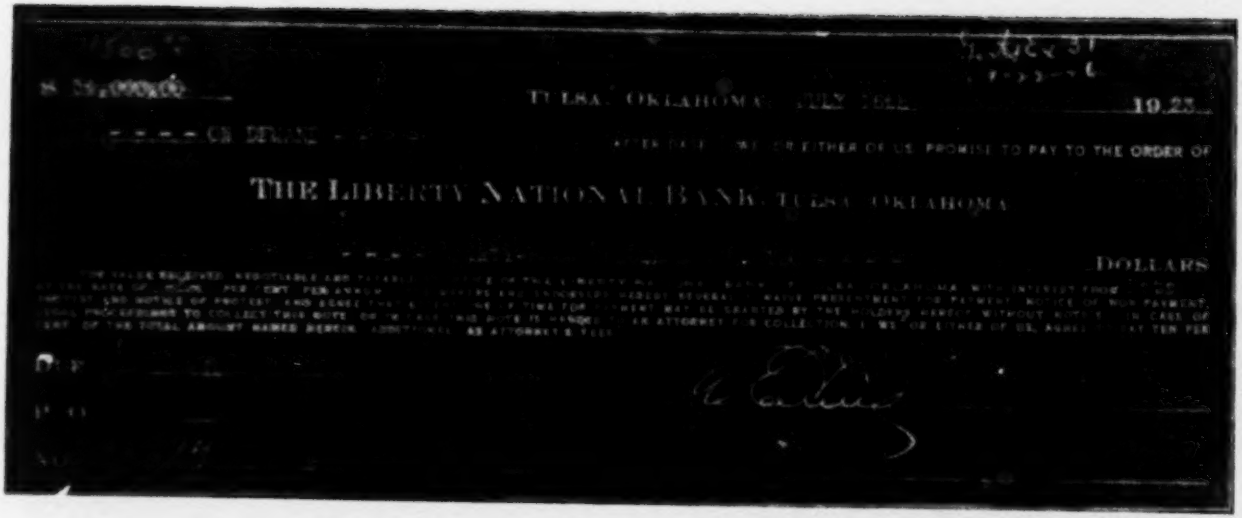
P. O.

NO. 7017

THE MINGO COMPANY,

By R. C. Lamprich
Secy. Treas.

(Endorsed on back:) The Liberty National Bank, by R. C. Lamprich, Cashier. (Cancelled revenue stamps.)

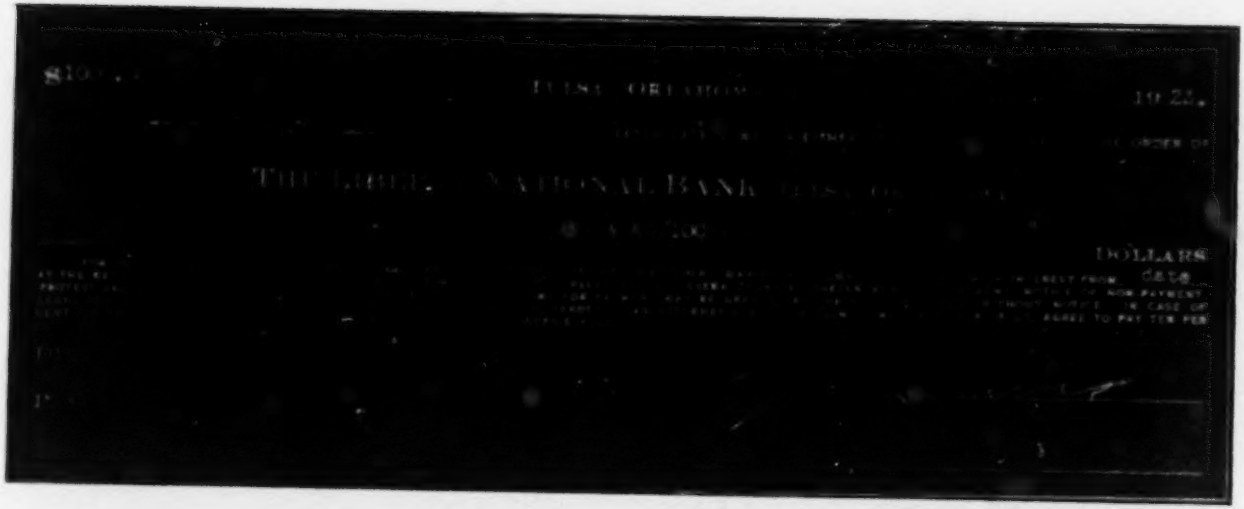


(Endorsed on back:) Nov 15 1923. Paid 22.500.00. 9-29-23 Inst pd to 10/15-23. The Liberty National Bank, Tulsa, Okla. By R. C. Lamprich, Cashier. (Cancelled revenue stamps)

Govt's Ex. 32.

(Endorsed on back:) The Liberty National Bank, Tulsa, Okla. By R. C. Lamprich, Cashier. (Cancelled revenue stamps)

Govt's Ex. 33.



(Endorsed on back:) The Liberty National Bank, Tulsa, Okla. By R. C. Lamprich, Cashier. (Cancelled revenue stamps)

Govt's Ex. 34.

(Endorsed on back:) Nov 15 1923 Paid 22,500.00. 9-29-23 Inst pd to 10/15-23. The Liberty National Bank, Tulsa, Okla. By R. C. Lamprich, Cashier. (Cancelled revenue stamps)

$ 15,000.00 H-49 TULSA, OKLAHOMA, JULY 2nd 1923

--- NINETY DAYS --- AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

---- FIFTEEN THOUSAND & NO/100 ---- DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM Date AT THE RATE OF -1- PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE 9-30-23

P. O. 106 E. 5th St. Tulsa, Okla.

NO. 22343

Mason Attest #18

(Gov Ex #35)

(Endorsed on back:) Int from July 19-23. The Liberty National Bank, Tulsa, Okla. By (Signed) R. C. Lamprich, Cashier. (Cancelled Revenue Stamp.)

Government's Exhibit No. 36.

Annual Stockholders' Meeting.

The Stockholders of The Liberty National Bank of Tulsa, Oklahoma, assembled in the City of Tulsa, State of Oklahoma, on the 9th day of January, 1923, at 3:00 o'clock P.M., in the bank's office, due notice of time and place of meeting having been given all stockholders of this bank.

The following stockholders and number of shares set opposite their respective names were present, either in person or by proxy:

Name	Address		No. Shares
A. E. Lewis	Tulsa, Okla.		1,100
W. L. Lewis	"		469
E. A. Ross	"		175
John T. Kramer	"		12½
H. N. Greis	"		75
E. F. Black	"		20
A. E. Duran	"		12½
Simon W. Knoten	"		95
Nora I. Suppes	"		125
Charles Stunkard	"	By Proxy	20
Mrs. Charles Stunkard	"	"	10
C. C. Simmons	"	"	10
Sara B. Mitchell	"	"	40
Mabel M. Mitchell	"	"	4
J. H. Powers	"	"	10

A majority of the capital stock of the bank was represented.

A. E. Lewis was elected Chairman and E. A. Ross Secretary.

Thereupon the Chairman announced the election of the Directors to serve until the next annual meeting of the Stockholders, as provided by the by-laws; a ballot being taken, the following were duly elected Directors of The Liberty National Bank:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

There being no further business presented, the meeting adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

We, A. E. Lewis, Chairman, and E. A. Ross, Secretary, hereby certify that the above and foregoing is a true and correct copy of the minutes of the stockholders' meeting of the Liberty National Bank of Tulsa, Okla., held on the 9th day of January, 1923.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors elect of The Liberty National Bank of Tulsa, State of Oklahoma, assembled in the City of Tulsa, Oklahoma, on the 9th day of January, 1923, at 4:00 o'clock P.M., the following directors being present:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

The oath of office was administered by Olive McQueen, a notary public, and each director duly subscribed his name thereto.

Thereupon the Chairman announced that the election of officers to serve until the next regular annual meeting was in order. A ballot being taken, the following were declared duly elected as officers of the said bank:

A. E. Lewis, President;
W. L. Lewis, Active Vice-President;
C. G. Garrett, Active Vice-President;
E. A. Ross, Vice-President;
R. C. Lamprich, Cashier;
C. E. Steen, Asst. Cashier;
Robt. L. LeBus, Asst. Cashier;
Edw. Gockel, Asst. Cashier.

Thereupon it was moved and carried that the Second Active Vice-President, Cashier, and Assistant Cashiers, and employees be required to give bond as the President and First Active Vice President see fit to require.

It was moved and carried that the salaries of A. E. Lewis as President and W. L. Lewis as First Active Vice President be $500.00 per month. The salaries of the other officers and employees was left entirely to the discretion of the President and First Active Vice-President.

A complete examination of the bank was made and approved, which included an examination of the expense book, all certificates of deposits outstanding, cashier's checks, cer-

tified checks, a thorough count of the cash, and a report of the Discount Committee on all loans made since the last meeting was held, including loans from Nos. 15095 to 16060, both inclusive.

A motion was made by E. A. Ross and seconded by H. N. Greis that we transfer $15,000.00 from the undivided profits account to the surplus account, $5,000.00 having been transferred to the surplus account December 30th, making a total to the surplus account of $100,000.00.

There being no further business before the meeting the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Tuesday, February 27th, 1923, with the following Directors present, to-wit:

A. E Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 16061 to 17085, both inclusive.

The expense book was also examined and approved.

The report of the recent examination of this bank has been received; was submitted to the directors at this meeting and duly considered.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Tuesday, March 20th, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 17086 to 18050, both inclusive.

The expense book was also examined and approved.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Tuesday, April 24th, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 18051 to 19056, both inclusive.

The expense book was also examined and approved.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock

P.M., Tuesday, May 22nd, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 19057 to 20070, inclusive.

The expense book was also examined and approved.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Tuesday, June 19th, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Gries,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 20071 to 20253, both inclusive.

The expense book was also examined and approved.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Friday, July 13th, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis.
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 20254 to 20362, both inclusive.

The expense book was also examined and approved.

The following resolution was adopted:

Resolved, That the President, Vice-President and Cashier of this bank are and each of them is hereby authorized to effect loans from time to time on behalf of this bank from the Mechanics & Metals National Bank of New York, the proceeds of such loans to be credited to this bank by the said Mechanics & Metals National Bank on its books; and, for such loans to make, execute and deliver the promissory notes of this bank, and, if required by the said bank, to pledge as collateral security for such loans and for other liabilities of this bank, any of the bonds, stocks, bills receivable or other securities or property of this bank, upon such terms as to lien upon, resort to, and application of such collateral and its proceeds as may be satisfactory to the said bank; and that such officers are respectively authorized, in lieu of effecting and securing loans as aforesaid, to procure from time to time to be rediscounted by the said Mechanics and Metals National Bank for this bank any of the bills receivable held by this bank, upon such terms as to collateral security and otherwise as may be satisfactory to the said bank.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled with the National Bank Examiner at Tulsa, Oklahoma, at 3:00 o'clock P.M., Saturday, August 11th, 1923, with the following Directors present:

A. E. Lewis,
E. A. Ross,
W.L. Lewis.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of thoroughly going over and discussing the affairs of the bank with the National Bank Examiner. The affairs of the bank were thoroughly gone over and discussed in detail with the Bank Examiner.

There being no further business before the meeting the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Special Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock P.M., Thursday, August 23rd, 1923, with the following Directors present:

A. E. Lewis,
John T. Kramer,
W. L. Lewis.

A. E. Lewis was chosen Chairman and W. L. Lewis Secretary.

A motion was made by John T. Kramer and seconded by A. E. Lewis, that E. A. Ross be re-elected as Director, as through an oversight on his part and on the part of the other Directors he was automatically disqualified as a Director on account of having pledged the full amount of his stock as collateral to a loan.

There being no further business before the meeting the board adjourned.

A. E. Lewis, Chairman.

Attest: W. L. Lewis, Secretary.

Directors' Meeting.

The Directors of The Liberty National Bank of Tulsa, Oklahoma, assembled at Tulsa, Oklahoma, at 3:00 o'clock

P.M., Monday, September 24th, 1923, with the following Directors present, to-wit:

A. E. Lewis,
W. L. Lewis,
E. A. Ross,
H. N. Greis,
John T. Kramer.

A. E. Lewis was chosen Chairman and E. A. Ross Secretary.

Thereupon the business of the meeting was announced by the Chairman, which was for the purpose of making a thorough examination of the loans and securities held by the said bank. A report of the Discount Committee on all loans made since the last meeting was read and approved, which includes loans from Nos. 20363 to 20614, both inclusive.

The expense book was also examined and approved.

The following resolutions were adopted:

Be It Resolved, That the Directors of The Liberty National Bank do hereby authorize and empower A. E. Lewis, President, and R. C. Lamprich, Cashier, officers of said bank, for and on behalf thereof, to execute a bond or bonds aggregating the sum of Fifty Thousand Dollars, with any surety acceptable to the United States, to secure certain funds described in said bond or bonds now on deposit or to be deposited in said bank by a United States Disbursing Officer; and said officers are duly authorized to bind said bank to a full and complete performance of any and all obligations contained therein; and they are further authorized and instructed on behalf of said bank to pay interest on the funds mentioned above at the following rates: 4%, and to execute any and all other papers required by the Interior Department in connection with the execution of said bond or bonds.

Be It Resolved, That the Directors of The Liberty National Bank do hereby authorize and empower A. E. Lewis, President, and R. C. Lamprich, Cashier, officers of said bank, for and on behalf thereof, to execute a bond or bonds aggregating the sum of Twenty-five Thousand Dollars, with any surety acceptable to the United States, to secure certain funds described in said bond or bonds now on deposit or to be deposited in said bank by a United States Disbursing Officer; and said officers are duly authorized to bind said bank to a full and complete performance of any and all obligations contained therein; and they are further authorized and instructed on behalf of said bank to pay interest on the funds mentioned above at the following rates: 4%, and to execute any

and all other papers required by the Interior Department in connection with the execution of said bond or bonds.

There being no further business before the meeting, the board adjourned.

A. E. Lewis, Chairman.

Attest: E. A. Ross, Secretary.

Govt's Ex. 37.

$30,000.00 TULSA. OKLAHOMA. April 8th, 1922.

- - - - - NINETY DAYS - - - - - - - AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - - - - - - - - THIRTY THOUSAND & NO/100 - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM date AT THE RATE OF ____ PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE 10-5-23

P. O

NO. 10018 G-12 (Gov't Ex. #17)

John T. Kramer

Stanley 8-23

98. UNITED STATES OF AMERICA. 897

(On back of Government's Exhibit 37:)

Government's Exhibit 38.

State of Oklahoma

Department of State

(Seal) R. A. Sneed, Secretary of State

To All to Whom These Presents Shall Come, Greeting:

I, R. A. Sneed, Secretary of State, of the State of Oklahoma, do hereby certify that the following and hereto attached is a true copy of Articles of Incorporation of Mingo Company, Tulsa, Okla., filed Nov. 11th, 1918, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Oklahoma City, this Twenty-first day of July, A. D. 1925.

R. A. SNEED,
Secretary of State;

WM. LEE ROBERTS,
Ass't Secretary of State.

(Great Seal of the
State of Oklahoma)

Articles of Incorporation

Mingo Company

Know All Men by These Presents:

That the undersigned, citizens of the State of Oklahoma, do hereby voluntarily associate themselves together for the purpose of forming a private corporation under the laws of the State of Oklahoma, and do hereby certify:

First: That the name of the corporation shall be Mingo Company.

Second. That the purposes for which this corporation is formed are to:

Buy, sell, deal in, operate, exchange, mortgage and control oil, gas, and all other mineral leases; to lease land for oil, gas, coal and all other minerals; to drill and prospect for oil, gas, coal and other minerals; to drill, own, operate, buy, sell, manage, mortgage and control oil, gas and water wells; to buy, sell, own, mortgage and deal in oil tools, machinery, appliances, fixtures; to buy, sell, own, mortgage, exchange and

operate telephone and telegraph lines; to construct, build, own, buy, sell, mortgage, manage, and control pipe lines; to buy, sell, own, mortgage, operate, manage and control oil tanks, oil casing, boilers, engines, power houses, derricks, drilling machines, rods, tubes, lines, cables and all other oil and gas drilling and operating machinery; to produce crude oil, natural gas and gasoline; to build, construct, buy, own, *martage*, manage, control, operate and sell oil refining machinery, refining plants fully equipped; to refine crude oil into its various products and by-products; to own, control, buy, sell, mortgage and manage all by-products manufactures from petroleum or crude oil; to buy, sell, own, build, construct, mortgage, deal in and exchange gasoline made from casing-head gas; to buy, sell, mortgage, deal in, own, construct, manage, operate and control all necessary and proper machinery, tools, appliances, fixtures, derricks, tanks, casing, boilers, engines, pipes, tubing, rods, power houses, compressors, separate plants, refineries, tank cars, oil leases, oil wells, gas wells, gas leases, gasoline, leases, and gasoline mining rights, and to do all things necessary and incident to the successful carrying on, operating, manufacturing and producing oil, gas, coal, lead, zinc, copper, gasoline, refined oil, and the products of crude oil; and to enter into such contracts and buy and sell such property, both real and personal, as may be necessary and incident to the drilling and prospecting for oil and gas, and to the producing, buying, selling and transporting of oil and gas, not inconsistent with the Constitution and Laws of the State of Oklahoma.

Third. That the place where its principal business is to be transacted is at Tulsa, Oklahoma.

Fourth. That the term for which this corporation is to exist is twenty (20) years.

Fifth. That the number of directors or trustees of this corporation, and the names and residences of each of them who are to serve until the election of such officers and their qualifications, are as follows:

A. E. Lewis, Tulsa, Okla.;

W. L. Lewis, Tulsa, Okla.;

R. C. Lamprich, Tulsa, Okla.,

same being all the present directors of the company.

Sixth: That the amount of capital stock of this corporation shall be twenty-five thousand (25,000) dollars, and shall be divided into two hundred fifty (250) shares of the par value of one hundred ($100.00) dollars each.

In Witness Whereof, we have hereunto subscribed our name on this 8th day of November, 1918.

This certificate is issued subject to the following constitutional requirements: That the corporation to which it is issued will submit any difference it may have with employees with reference to labor, to arbitration, as shall be provided by law.

A. E. LEWIS,
W. L. LEWIS,
R. C. LAMPRICH.

State of Oklahoma,
Tulsa County—ss.

Before me, the undersigned, a notary public in and for said county and state, on this 8th day of November, 1918, personally appeared A. E. Lewis, W. L. Lewis, and R. C. Lamprich, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth. Ray S. Fellows, Notary Public. (Seal) My commission expires Nov. 18, 1919.

28038. Articles of Incorporation of Mingo Company, Tulsa, Okla. Secretary's Memorandum. Oklahoma City, State of Oklahoma. Secretary's office. This instrument was filed for record this 11th day of Nov., A. D. 1918, at 11 o'clock A.M. Recorded in ..... Corporation Record No. 102, at page 592. J. L. Lyon, Secretary of State. By O'Neil. Fee $30.00. Del. to Bell & Fellows, Tulsa. Gov. Ex. 38. 1-23-26.

Government's Exhibit 39.

State of Oklahoma

Department of State

R. A. Sneed, Secretary of State.

(Great Seal)

To All to Whom These Presents Shall Come, Greeting:

I, R. A. Sneed, Secretary of State, of the State of Oklahoma, do hereby certify that the following and hereto attached is a true copy of Articles of Incorporation of The Lincoln Company, Tulsa, Oklahoma, filed November 12, 1920, the original of which is now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of State.

Done at the City of Oklahoma City, this Twenty-first day of July, A. D. 1925.

R. A. SNEED,
Secretary of State.

(Great Seal of the State of Oklahoma.)

WM. LEE ROBERTS,
Ass't Secretary of State.

Articles of Incorporation of The Lincoln Company.

Know All Men by These Presents:

That the undersigned, citizens of the State of Oklahoma, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of the State of Oklahoma, and do hereby certify:

First: That the name of this corporation shall be The Lincoln Company.

Second: That the purposes for which this corporation is formed are:

To buy, sell, deal in, operate, exchange, mortgage and control, oil, gas, coal, lead, zinc, and all other mineral leases; to lease lands for oil, gas, coal, lead, zinc, and all other minerals; to drill, prospect for, produce, mortgage, sell and export oil, gas, coal, lead, zinc, and all other minerals; to drill, own, operate, buy, sell, manage, mortgage and control oil, gas and water wells; to construct, buy, sell, own, operate, mortgage, exchange and convey telephone and telegraph lines; to construct, own, buy, sell, mortgage, manage and convey pipe lines; to buy, sell, own, mortgage, operate, manage and convey oil tanks, oil casing, boilers, engines, power houses, derricks, drilling machines, rods, tubes, lines, cables and all other oil and gas drilling and operating machinery; to drill test holes for all minerals, sink shafts, erect, operate, mortgage and convey mills and all necessary *appliances* for production of ore and preparation of same for marketing; to build, construct, buy, own, mortgage, manage, control, operate and sell oil refining machinery and refining plants fully equipped; to refine crude oil into all its various products and by-products; to own, control, buy, sell, mortgage and convey all by-products manufactured from petroleum or crude oil; to buy, sell, own, build, construct, mortgage, deal in and convey gasoline plants; to compress, manufacture, refine, buy and sell gasoline at wholesale or retail, whether made from casinghead gas, pe-

troleum or other products; to buy, sell, mortgage, deal in, own, manage, operate, construct and control all necessary and proper machinery, tools, appliances, fixtures, derricks, tanks, casing, boilers, engines, pipes, tubing, rods, power houses, compressors, separating plants, refineries, tank cars, oil leases, oil wells, gas wells, gas leases, gasoline leases, and gasoline mining rights, and to do all things necessary and incident to the successful producing and marketing of gas, coal, lead, zinc, and all other minerals, copper, gasoline, refined oil, and the manufacture, marketing and exporting of such mineral products or by-products; to buy, own, owe, sell and convey stock of other corporations not engaged in competitive business with this corporation; and to enter into such contracts and buy and sell such property as may be necessary and incident to the drilling and prospecting for oil, gas, coal, lead, zinc, and all other minerals, and to the producing, buying, selling and transporting of oil, gas, coal, lead, zinc, and other minerals, and of gasoline and other by-products of such minerals, not inconsistent wtih the Constitution and Laws of the State of Oklahoma.

Third. That the place where its principal business is to be transacted is at Tulsa, Oklahoma, but branch offices may be established at such other places within or without the State of Oklahoma as the Board of Directors might designate, at which meetings of the stockholders and directors may be held if found necessary.

Fourth. That the term for which this corporation is to exist is twenty (20) years.

Fifth. There shall be three (3) directors of this corporation. All directors must be stockholders in the corporation, owning at least one or more shares of stock of record in his name on the books of the corporation. The names of such persons who shall serve as directors until the election of their successors are as follows:

Ray S. Fellows, Tulsa, Oklahoma;

Stanley D. Campbell, Tulsa, Oklahoma;

W. L. Doyel, Tulsa, Oklahoma.

Sixth. That the amount of capital stock of this corporation shall be twenty-five thousand dollars ($25,000.00) and shall be divided into two hundred fifty shares (250) of the par value of one hundred dollars ($100.00) each.

In Witness Whereof, we have hereunto subscribed our names on this the 6th day of November, 1920.

This certificate is issued subject to the following constitutional requirement: That the corporation to which it is issued will submit any difference it may have with employes with reference to labor to arbitration, as shall be provided by law.

RAY S. FELLOWS,
STANLEY D. CAMPBELL,
W. L. DOYEL.

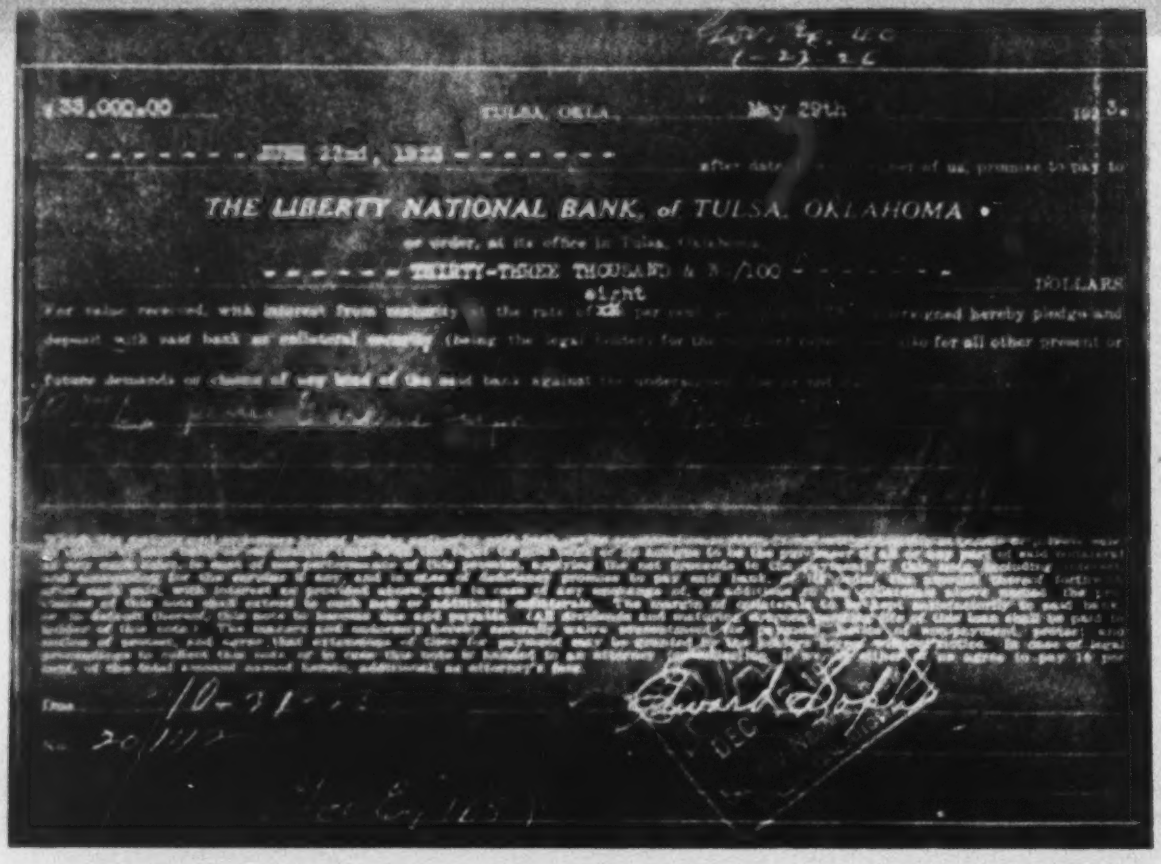
State of Oklahoma,
County of Tulsa—ss.

Before me, the undersigned, a notary public within and for said county and state, on this 6th day of November, 1920, personally appeared Ray S. Fellows, Stanley D. Campbell and W. L. Doyel, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth. Pearl M. Irwin, Notary Public. (Seal) My commission expires September 16th, 1924.

34818. Articles of Incorporation of The Lincoln Company, Tulsa, Okla. Secretary's Memorandum. Oklahoma City, State of Oklahoma, Secretary's office. This instrument was filed for record this 12 day of November, A. D. 1920, at 10 o'clock A.M. Recorded in Corporation Record 126 at page 260. Joe S. Morris, Secretary of State. By O. Harrison. $28.00. 1.00 CC. Bell & Fellows, Attorneys at Law, Tulsa, Oklahoma. Gov. Ex. 39: 1-23-26.

Government's Exhibit No. 40.

Government's Exhibit No. 40.



$35,000.00 TULSA, OKLA., May 29th, 1923

- - - - - - - JUNE 22nd, 1923 - - - - - - -

after date ... we, promise to pay to

THE LIBERTY NATIONAL BANK, of TULSA, OKLAHOMA

or order, at its office in Tulsa, Oklahoma

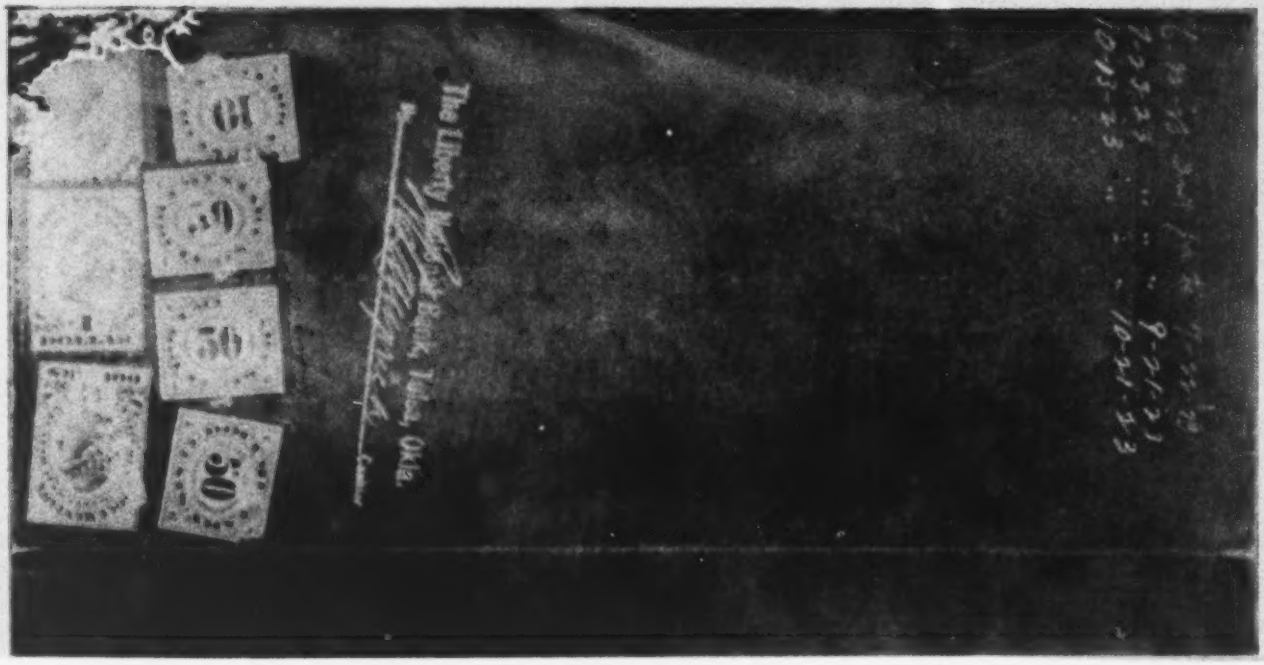
- - - - - - THIRTY-THREE THOUSAND & 8/100 - - - - - - - - DOLLARS

eight

For value received, with interest from maturity at the rate of 8% per ... we ... hereby pledge and deposit with said bank as collateral security (being the ... for the ... note) for all other present or future demands or claims of any kind of the said bank against the undersigned ...

Edward Doyle

(On reverse side of Government's Exhibit No. 40:)



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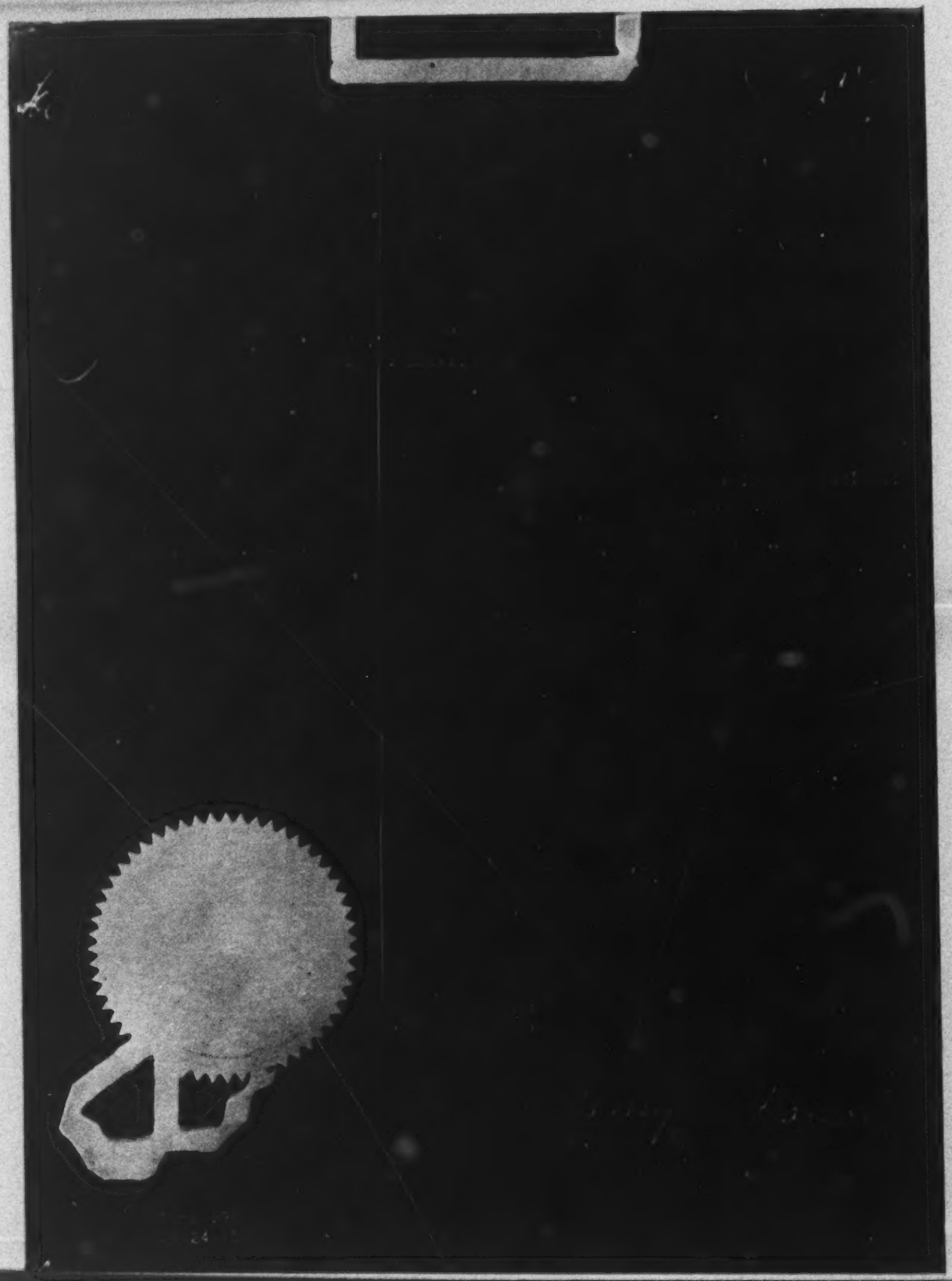

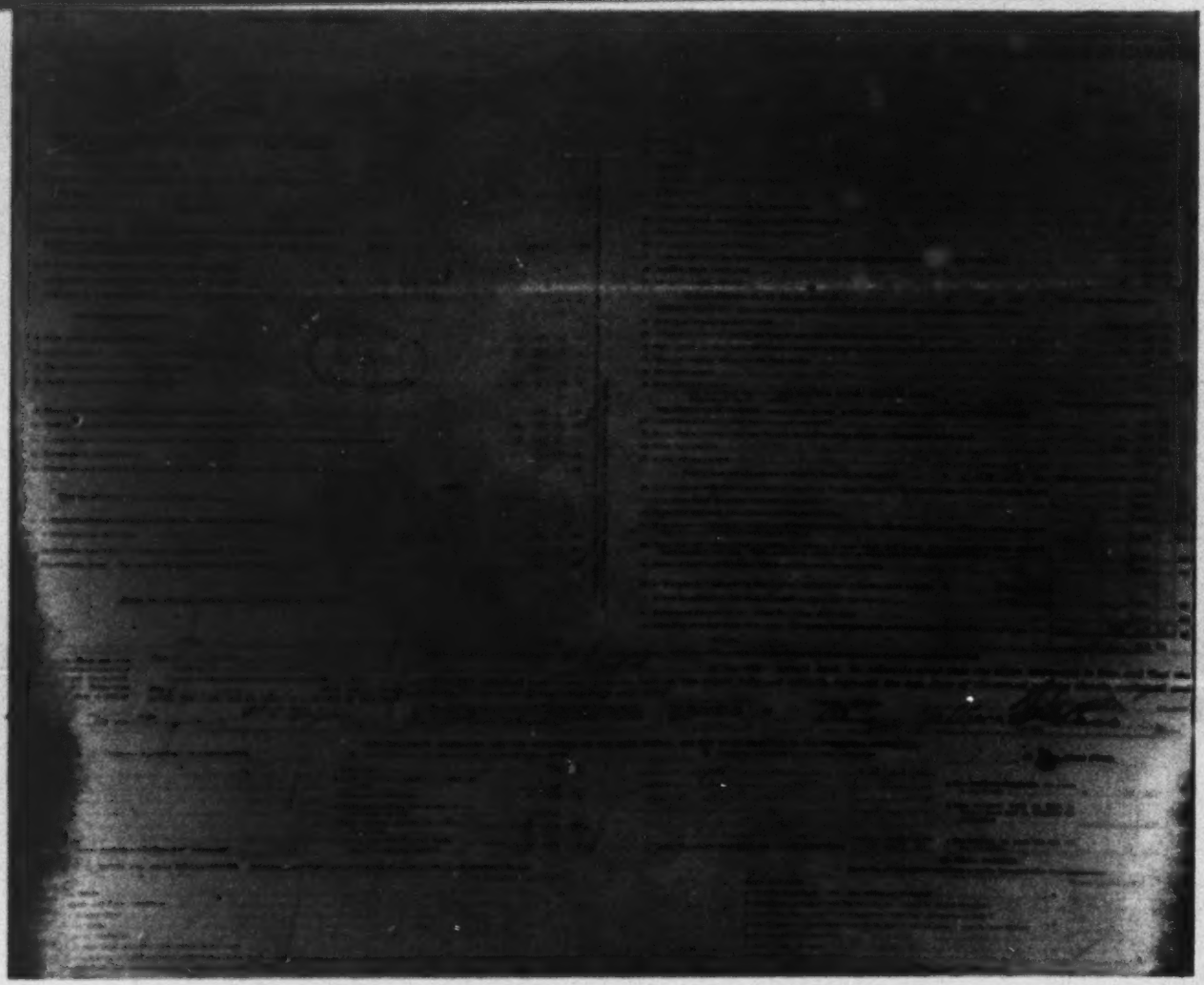

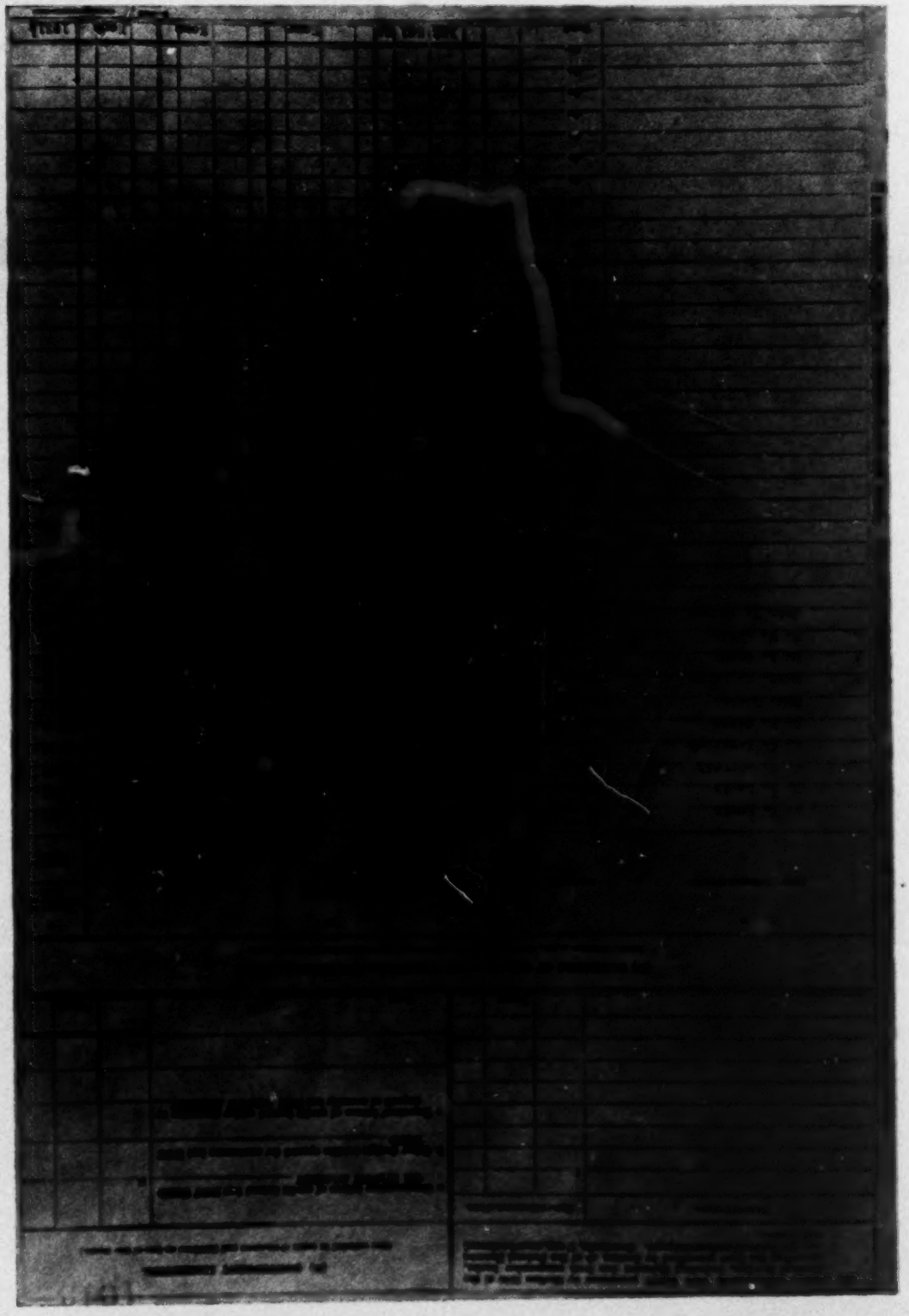

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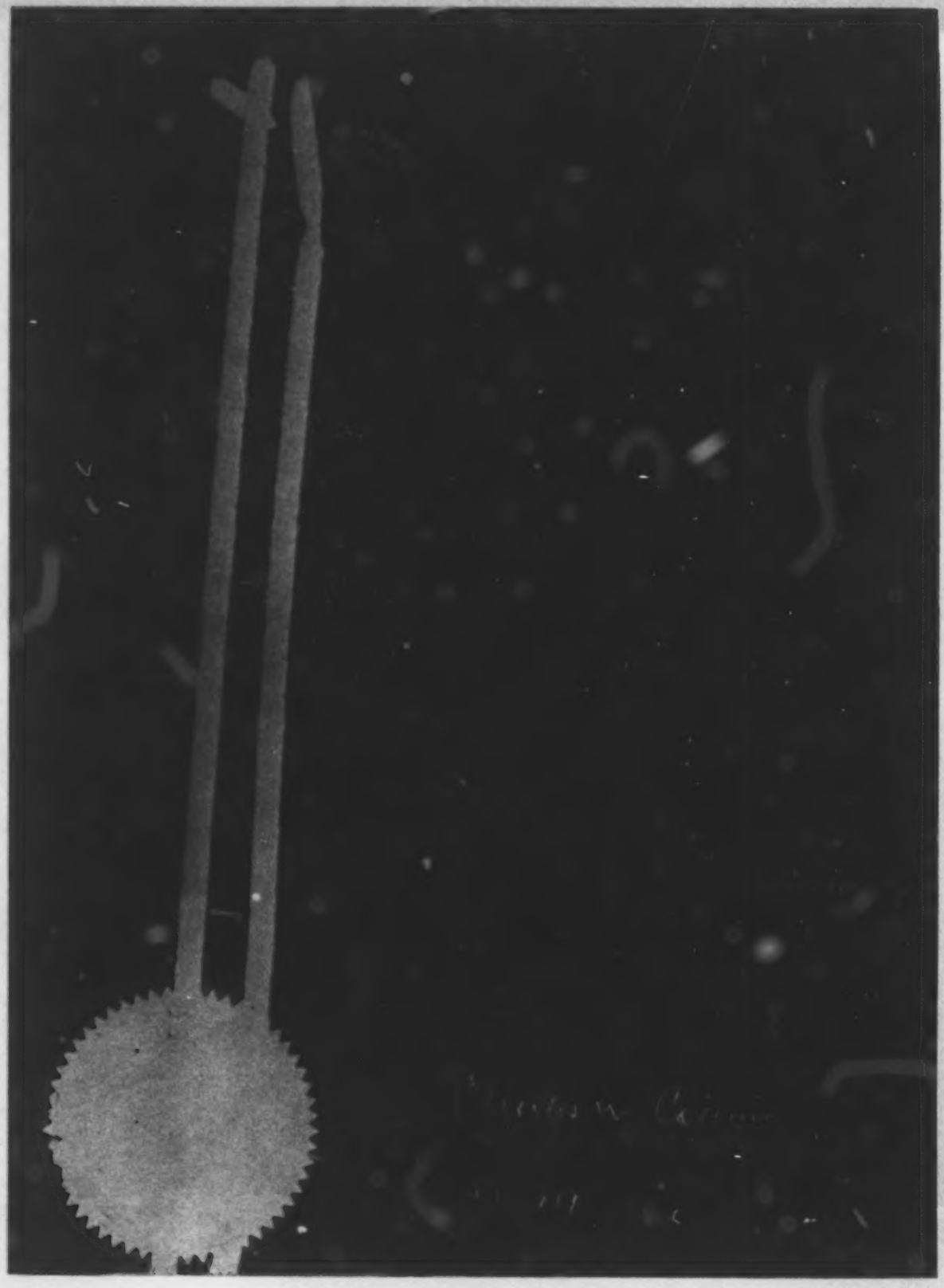
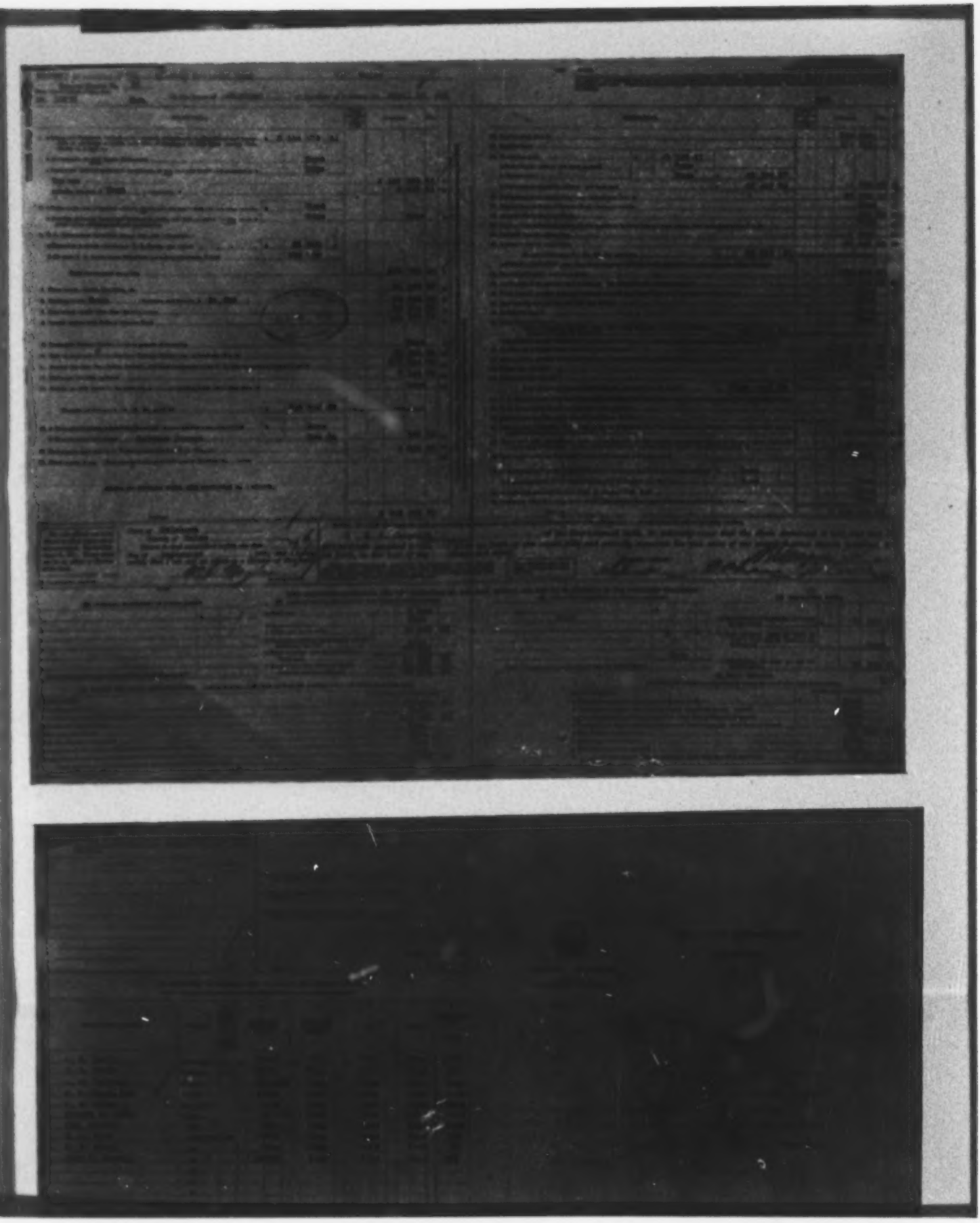
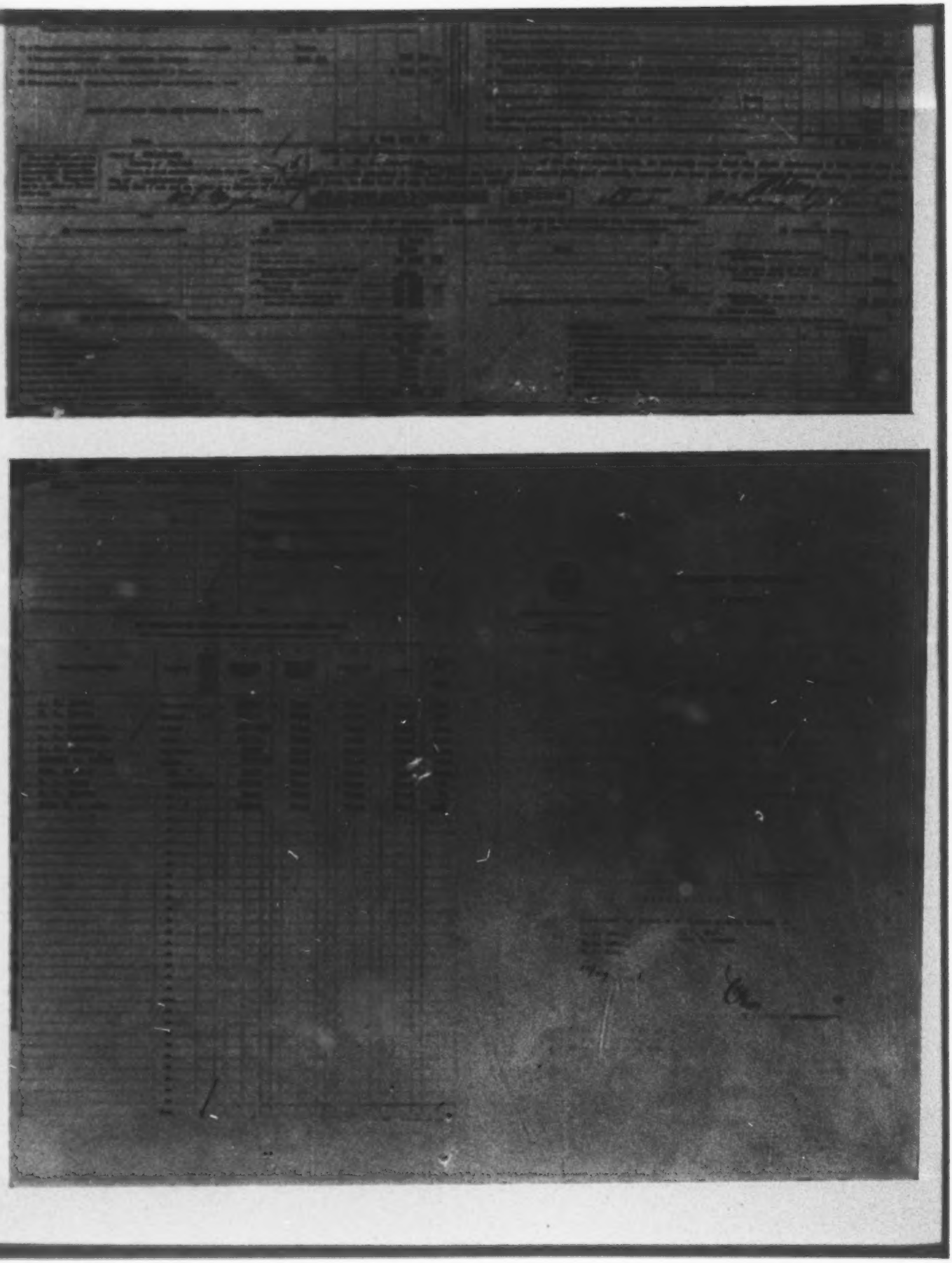
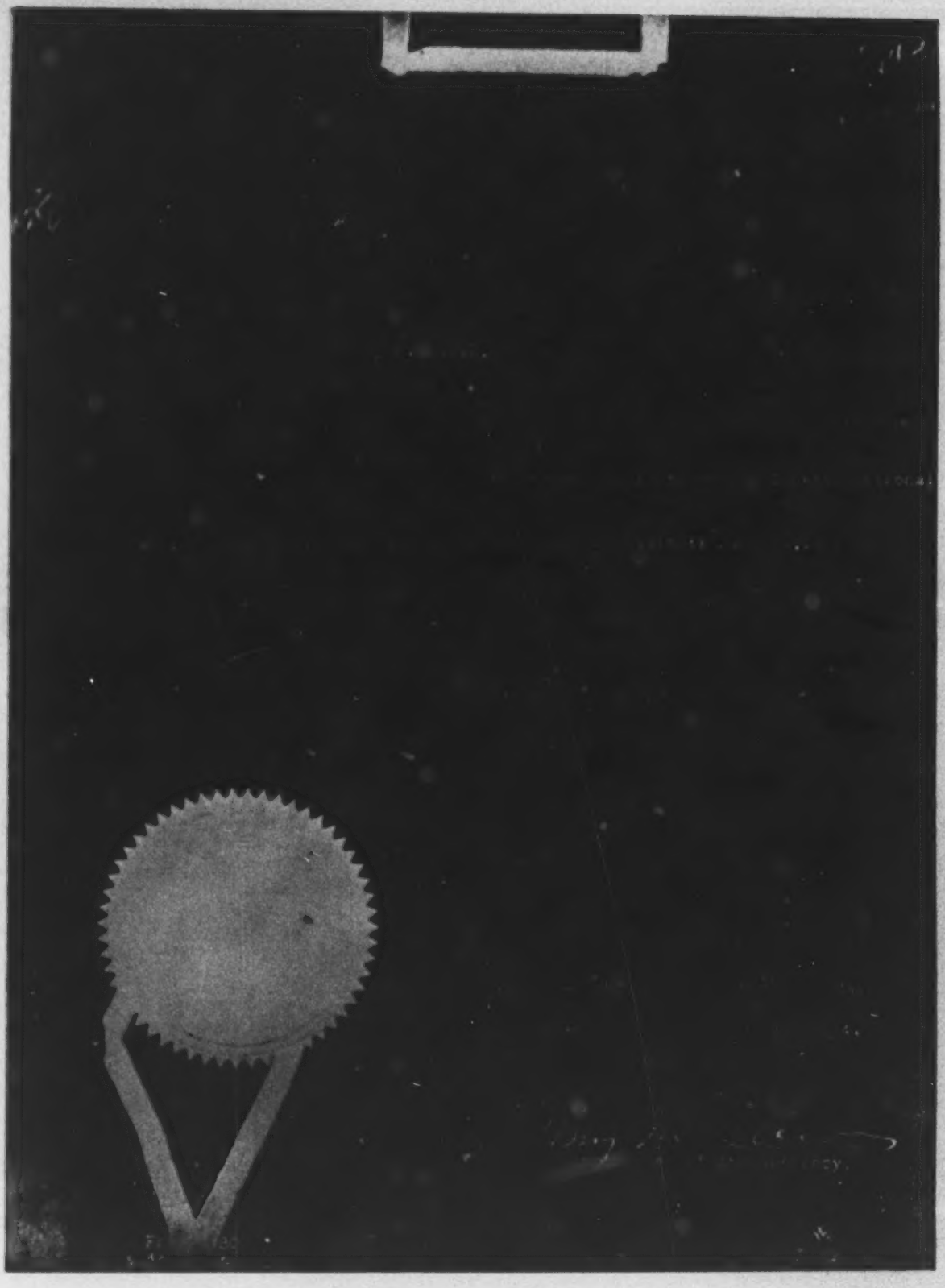
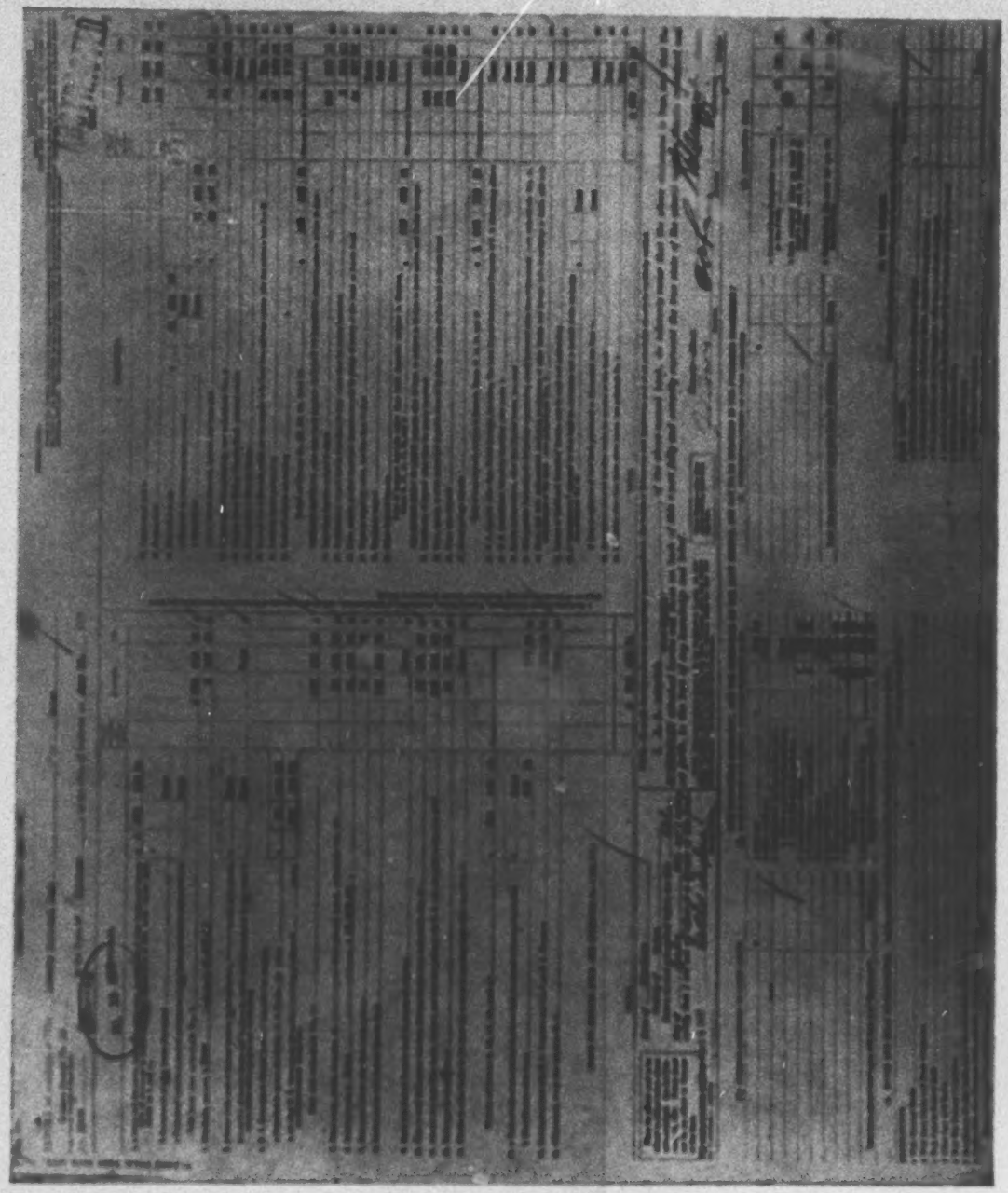


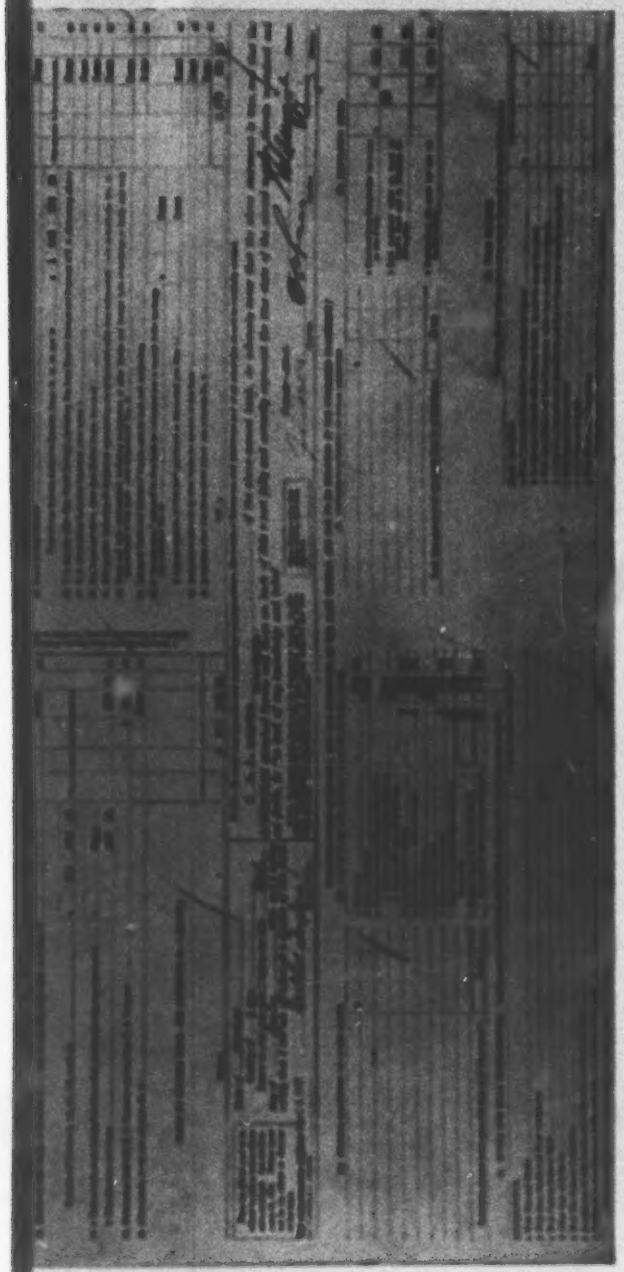




Government's Exhibit No. 43.







(Showing endorsements on back.)

Trust Rec → 5715 Gov Ext #101

$29,500.00 (300-)

TULSA, OKLA., December 22nd, 1922.

$29300.00 - - NINETY DAYS - - - - - - after date, I, we or either of us, promise to pay to

THE LIBERTY NATIONAL BANK, of TULSA, OKLAHOMA

or order, at its office in Tulsa, Oklahoma,

- - - - - TWENTY-NINE THOUSAND FIVE HUNDRED & NO/100 - - - - DOLLARS

For value received, with interest from maturity at the rate of ten per cent. per annum. The undersigned hereby pledge and deposit with said bank as collateral security (being the legal holder) for the payment hereof, and also for all other present or future demands or claims of any kind of the said bank against the undersigned, due or not due

252	Shares	Chestnut & Smith Corporation, preferred stock	Value 7000 00	
126	"	Chestnut & Smith Corporation, common stock.	" 1900	Value
16	"	Moon Gasoline Company stock.	$400 per sh " 6400	35000.
2000	"	Barco Gasoline Company stock.	35	

Which the makers and endorsers hereof hereby authorize said bank, or its president or cashier, to sell without notice at public or private sale, at option of said bank or its assigns (and with the right to said bank or its assigns to be the purchaser of all or any part of said collateral at any such sale), in case of non-performance of this promise, applying the net proceeds to the payment of this note, including interest, and accounting for the surplus if any, and in case of deficiency promise to pay said bank, or its order, the amount thereof forthwith after such sale, with interest as provided above, and in case of any exchange of, or additions to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals. The margin of collaterals to be kept satisfactorily to said bank, or, in default thereof, this note to become due and payable. (All dividends and maturing coupons pending life of this loan shall be paid to holder of this note.) The makers and endorsers hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and agree that extensions of time for payment may be granted by the holders hereof without notice. In case of legal proceedings to collect this note, or in case this note is handed to an attorney for collection, I, we, or either of us agree to pay 10 per cent. of the total amount named herein, additional, as attorney's fees.

Due 11-17-23 OK

No 15 29

Value 35000 00

G-70

4-17-23 Trust Rec to 8-16-23

9-21-23 " " 11-17-23

$200=

1-22-23. Div on Barco Stock

(Stamped on face:) Paid Nov. 20, 1923. Security National Bank, Tulsa Oklahoma.

Govt's Ex. 45.
(Showing endorsements on back.)

Dist. Ct. No. 765 61 — Govt. Exhibit No. 60

$21,750.00 — 950 — 20800 — 725 — 20,075.00

TULSA, OKLA. December 29th, 1922 192

SIX MONTHS after date, I, we or either of us, promise to pay to

THE LIBERTY NATIONAL BANK, of TULSA, OKLAHOMA

or order, at its office in Tulsa, Oklahoma,

TWENTY-[illegible] THOUSAND SEVEN HUNDRED FIFTY & NO/100 DOLLARS

For value received, with interest from maturity at the rate of [illegible] per cent. per annum. The undersigned hereby pledge and deposit with said bank as collateral security (being the legal holder) for the payment hereof, and also for all other present or future demands or claims of any kind of the said bank against the undersigned, due or not due

Cert. No. 82 for - 70 Shares Moon Gasoline Co. Stock: value $7000 -

Cert. No. 98 for - 5 Shares Sun Gasoline Co. Stock: " $3000 =

Which the makers and endorsers hereof hereby authorize said bank, or its president or cashier, to sell without notice at public or private sale, [illegible] at any such sale, in case of non performance of this promise, applying the net proceeds to the payment of this note, including interest, and accounting for the surplus if any, and in case of deficiency promise to pay said bank, or its order, the amount thereof forthwith after such sale, with interest as provided above, and in case of any exchange of, or additions to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals. The margin of collaterals to be kept satisfactorily to said bank, or, in default thereof, this note to become due and payable. (All dividends and maturing coupons pending life of this loan shall be paid to holder of this note.) The makers and endorsers hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and agree that extensions of time for payment may be granted by the holders hereof without notice. In case of legal proceedings to collect this note, or in case this note is handed to an attorney for collection, I, we or either of us agree to pay 10 per cent. of the total amount owned hereon, additional, as attorney's fees.

Due 12-26-23

No. 1601

C. M. Ballard

12-9

6/27/23
12/26-23

11 #

- - - -

Government's Exhibit No. 46.

38

INDIVIDUAL (MERCHANT)

From James W. McDonnell Address 1821 South Cheyenne, Tulsa, Okla.

Business Real Estate

To The Liberty National Bank

FOR THE PURPOSE OF OBTAINING LOANS AND DISCOUNTING PAPER WITH YOU, AND OTHERWISE PROCURING CREDIT FROM TIME TO TIME, I FURNISH YOU WITH THE FOLLOWING STATEMENT AND INFORMATION, WHICH IS AND IS SHOWN BY MY BOOKS TO BE A TRUE AND CORRECT STATEMENT OF MY FINANCIAL CONDITION ON May 10th, 19 23

I AGREE TO AND WILL NOTIFY YOU IMMEDIATELY IN WRITING OF ANY MATERIALLY UNFAVORABLE CHANGE IN MY FINANCIAL CONDITION, AND IN THE ABSENCE OF SUCH NOTICE, OR OF A NEW AND FULL WRITTEN STATEMENT, THIS MAY BE CONSIDERED AS A CONTINUING STATEMENT AND SUBSTANTIALLY CORRECT; AND IT IS HEREBY EXPRESSLY AGREED THAT UPON APPLICATION FOR FURTHER CREDIT, THIS STATEMENT SHALL HAVE THE SAME FORCE AND EFFECT AS IF DELIVERED AS AN ORIGINAL STATEMENT OF MY FINANCIAL CONDITION AT THE TIME SUCH FURTHER CREDIT IS REQUESTED.

(FILL ALL BLANKS, WRITING "NO" OR "NONE" WHERE NECESSARY TO COMPLETE INFORMATION)

ASSETS

Cash on hand and in bank		513	77
Investments: Bonds and Stocks			
Merchandise (how valued)			
" (how valued)			
Raw material (how valued)			
Bills (notes) Receivable, all good, due from customers		2 000	00
Accounts Receivable			
Total Quick Assets			
Accounts (good part) Receivable, amounts			
Machinery and Fixtures (less)			
Town or City Real Estate (at actual present value)		65 000	00
Country Real Estate			
432 Shares Sinclair Stock		14 256	00
Personal property consisting of automobiles, furnishings, diamonds etc.		10,000	00
Horses and cattle		7,500	00
Total	$	99, 269	77

Specify any of Above Assets Pledged as Collateral

LIABILITIES

Bills (notes) Payable given for merchandise			
Bills (notes) Payable mostly secured from bank		32 213	72
Notes Payable, others than the above			
Open Accounts Payable, not due			
" " " past due			
Owing to Relatives and Friends			
Deposits of Money by relatives, employees and others			
Liens or Incumbrances on merchandise or other assets (other than real estate mortgages)			
Chattel Mortgages on			
Mortgages on town and city real estate		10 000	00
Mortgages on country real estate			
Total Liabilities		42 213	72
Net Worth		57 056	05
Total		$99,269	77

Specify Any of Above Liabilities Secured by Collateral

Contingent Liability: Not included in above statement above Upon Accommodation Paper $ None For Guarantees $ None

Upon Endorsed Paper $ None For Bonds $ Upon Notes Receivable or Customers, Discounted or Sold $

Insurance: on merchandise $ on buildings $ on machinery $ Total Insurance

Business Life Insurance: to whom payable company amount

Business and Results: Annual Sales for the year ended 19 to 19 to 19

Gross Profits on Sales for the same period	
Other Income (including dividends) " " " "	
Expense of Conducting Business " " " "	
Net Profit on Sales " " " "	
Amount Withdrawn from business for personal use	
Amount Charged Off for Depreciation	
Surplus (over)	

Deft Ex #15

(Reverse side of Government's Exhibit No. 46:)

BANK ACCOUNTS: The Liberty National Bank

INSURANCE: All insured

REAL ESTATE

DESCRIPTION	IMPROVEMENTS	VALUE	MORTGAGES	EQUITY
House & Lot 1821 So. Cheyenne	Value			15 000 00
217 E. 18th				20 000 00
18 Lots Lewis & 15th Street, including 5 houses				30 000 00

IN WHOSE NAME & TITLE IS REAL ESTATE HELD: J. W. McDonnell

IF REAL ESTATE HELD IN FEE SIMPLE OR LEASEHOLD?

DESCRIBE HERE ALL BONDS AND STOCKS OWNED: 432 Shares Sinclair Stock

OTHER DATA: I carry Life Insurance in favor of my wife.

I have no suits nor judgments against me.

I, THE UNDERSIGNED, HEREBY SOLEMNLY CERTIFY AND DECLARE THAT THE ABOVE STATEMENTS AND REPRESENTATIONS CONSTITUTE A TRUE AND ACCURATE ACCOUNT OF MY FINANCIAL CONDITION AS OF THE DATE FIRST ABOVE GIVEN.

DATE: May 10th, 1923 (SIGNATURE): J. W. McDonnell

WITNESSED BY: Edw. Gorsuch (ADDRESS): 1821 South Cheyenne

STATEMENTS SUBMITTED TO FEDERAL RESERVE BANK MAY EITHER BE SWORN TO BEFORE A NOTARY PUBLIC OR CERTIFIED COPIES. IF COPIES ARE FURNISHED, FOLLOWING CERTIFICATE MUST BE OFFICIALLY SIGNED BY MEMBER BANK

WE HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF A SIGNED FINANCIAL STATEMENT OF THE ABOVE MENTIONED INDIVIDUAL, FIRM OR CORPORATION NOW ON FILE IN THIS BANK.

(NAME OF MEMBER BANK)

(OFFICIAL SIGNATURE) (TITLE)

STATEMENTS CERTIFIED BY INDEPENDENT PUBLIC ACCOUNTANTS MAY, IN THE DISCRETION OF THE EXECUTIVE COMMITTEE OF THE FEDERAL RESERVE BANK, BE ACCEPTED IN LIEU OF (1)

Govt's Ex. 47.

86-9

Govt's Ex. 47.

86-9

THE LIBERTY NATIONAL BANK

No. 25311

PAY TO THE ORDER OF L. A. Kasten — TULSA, OKLA. ____ 192__

$2,500.00

DOLLARS

CASHIER'S CHECK

Ewe Lockett
Cashier

(Endorsed on back:) L W Knotts.

U.S. UNITED STATES OF AMERICA. 705

Govt's Ex. 48.

Govt Ex #68 B-23

$25,000.00
666.66

TULSA, OKLAHOMA May 21st, 1923

- - -SIXTY DAYS- - - AFTER DATE I WE OF EITHER OF US PROMISE TO PAY TO THE ORDER OF

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - -TWENTY-FIVE THOUSAND & NO/100- - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM MATURITY AT THE RATE OF -8- PER CENT PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT MADE HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE

P. O.

NO. 00064

E. J. Powell

(Endorsed on back:) 9-21-23 Inst pd to 11/20-23. The Liberty National Bank, Tulsa, Okla., By (Signed) R. C. Lamprich, Cashier. (Cancelled revenue stamps.)

Govt's Ex. 49.

Gf-26 (Govt Ex #75)

86-9

THE LIBERTY NATIONAL BANK

No. 6803

PAY TO THE ORDER OF

Tulsa, Okla. 192

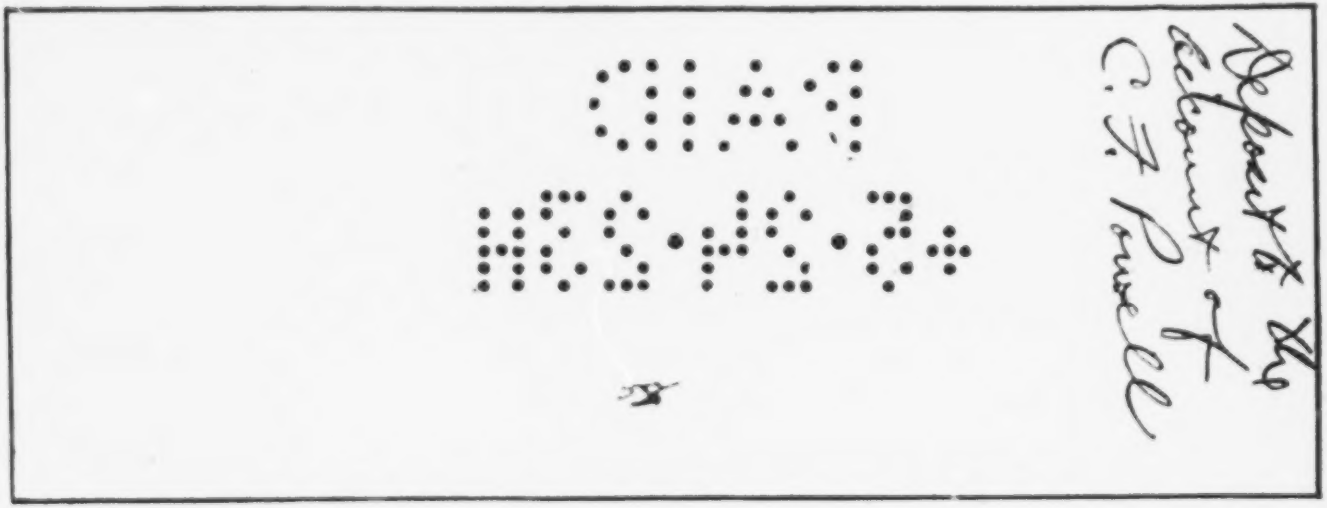
E. J. POWELL $24,495.00

NATL BANK $24495 AND 00 CTS. DOLLARS

THE MECHANICS & METALS NATL BANK,
1-4 NEW YORK.

Cashier

(On back of Government's Exhibit 49.)



(Clearing house stamps on back not shown in photographic reproduction.)

Govt's Ex. 54-A.

86-9

TULSA, OKLAHOMA, 8-15 1923 No. 668

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nat'l Bank OR BEARER $ 160.00

One Hundred Sixty and 00/100 — DOLLARS

On Note Nov 8, 15 — 6-78

(Stamped on face:) "Paid Aug. 16, '23. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-B.

86-9

TULSA, OKLAHOMA, 8-14 1923 No. 667

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nat'l Bank OR BEARER $200.00

Two Hundred 00/100 DOLLARS

On Note
Bears Int 8%

Allie E. Lewis

(Stamped on face:) "Paid Aug. 16, '23. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-C.

(Govt Ex #102)

85-9

TULSA, OKLAHOMA, 9-21 192 3 NO. 723

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nat'l Bank OR BEARER $ 800

Eight Hundred and no/100 DOLLARS

Accrued Int on Note (G-80) 81

A. M. Rogers

(Stamped on face:) "Paid Sept. 21, '23. Liberty National Bank Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-D.

TULSA, OKLAHOMA, 9-17 1923 No. 714

86-9

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nat'l Bank OR BEARER $ 504.00

Five Hundred Four 00/100 DOLLARS

9-75

(Stamped on face:) "Paid Sep. 17, '23. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

86-9

TULSA, OKLAHOMA, 6-4 1923 NO. 597

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nate Bank OR BEARER $ 400.00

Four Hundred and 00/100 DOLLARS

Loan on Note
Balance $10 6/1/23

(Stamped on face:) "Paid Jan. 4, '23. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-F.

TULSA, OKLAHOMA, 6-18 1923 NO. 6 v. o 86-9

THE LIBERTY NATIONAL BANK

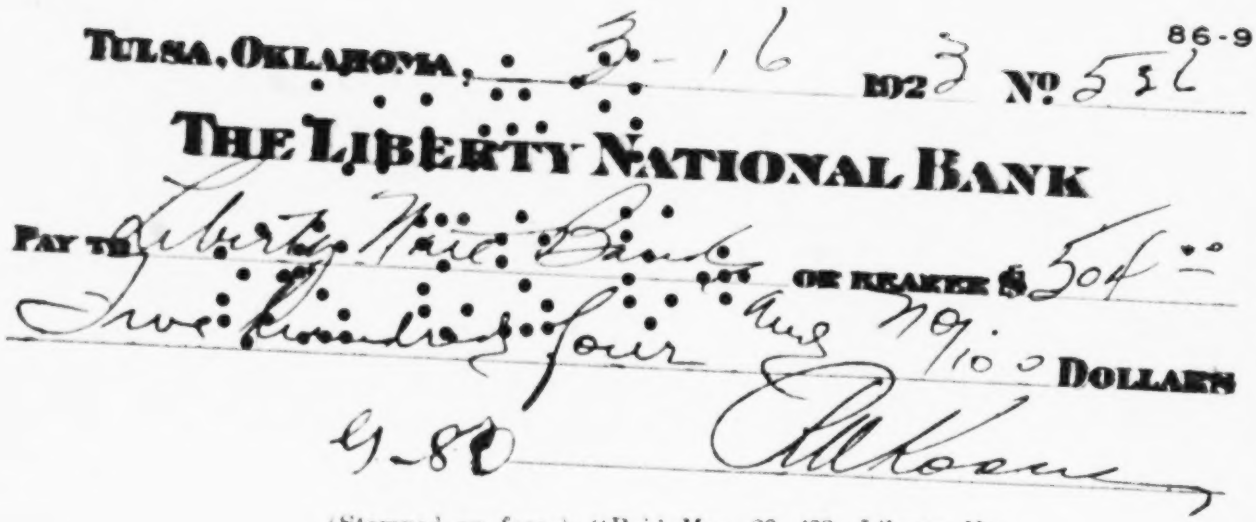
PAY TO Liberty Nat'l Bank OR BEARER $ 504.00

Five Hundred four and no/100 — DOLLARS

G-76 E. Keeney

(Stamped on face:) Paid Jun. 19, 1923. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-G.



TULSA, OKLAHOMA, 3-16 1923 No. 512 86-9

THE LIBERTY NATIONAL BANK

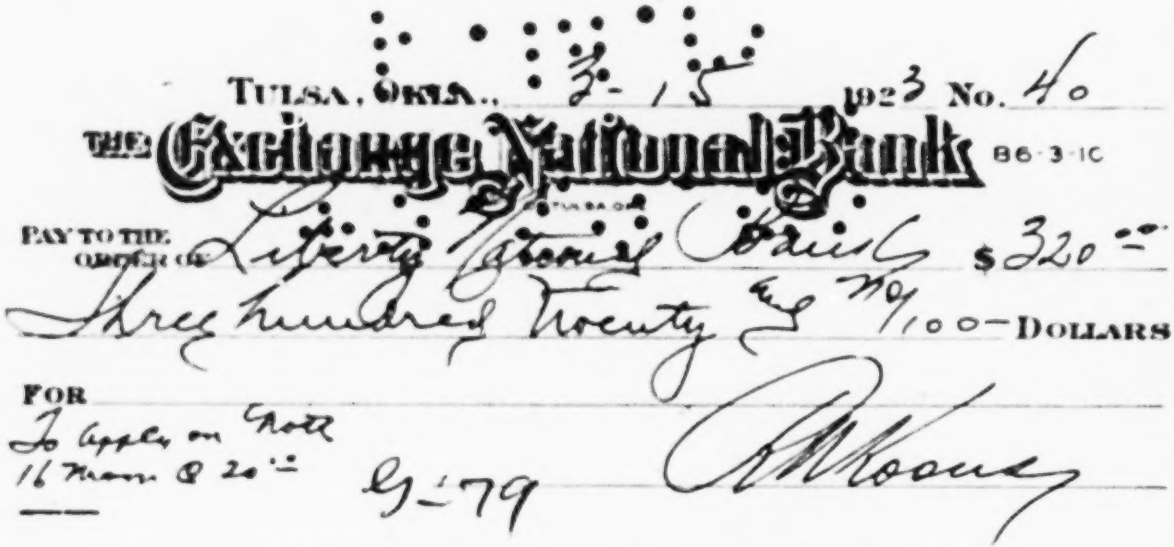
PAY TO Liberty Nat. Bank OR BEARER $ 504.00

Five hundred four Aug 70/100 DOLLARS

4-80

(Stamped on face:) "Paid Mar. 23, '23. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Govt's Ex. 54-H.



TULSA, OKLA., 3-15 1923 No. 40

THE EXCHANGE NATIONAL BANK

86-3-10

PAY TO THE ORDER OF Liberty Petroleum Corp $320.00

Three hundred twenty and no/100 DOLLARS

FOR

To apply on Note
16 Mar 8 20.00

G-79

(Endorsed on back:) The Tulsa Clearing House Ass'n. Paid Mar 23 1923. Endorsements Guaranteed. The Liberty Nat'l Bank. 6

Govt's Ex. 54-I.

TULSA, OKLA. 2 / 15 1923 No. 35

THE Exchange National Bank OF TULSA, OKLA. 86-3-10

PAY TO THE ORDER OF Liberty National Bank $ 800 00/100

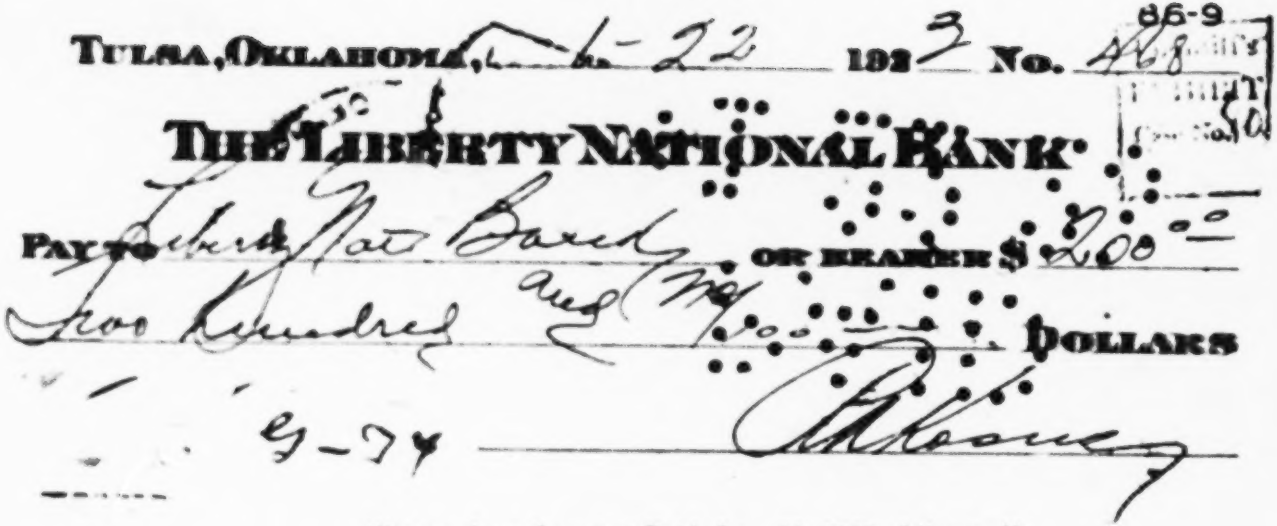
Eight Hundred & 00/100 DOLLARS

FOR Surdens 16 Stenog Room Exp 50
To redeem Notes

49-73

(Endorsed on back:) The Tulsa Clearing House Ass'n. Paid Feb 15 1923. Endorsements Guaranteed. The Liberty Nat'l Bank. 6

Govt's Ex. 54-J.


TULSA, OKLAHOMA, 1-22 1923 No. 86-9

THE LIBERTY NATIONAL BANK

PAY TO Liberty Nat. Bank OR BEARER $ 200.00

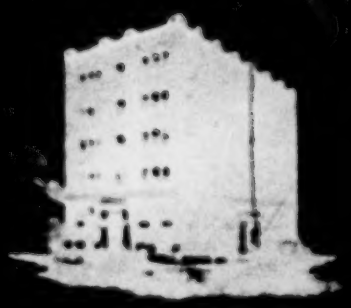
Two Hundred and No/100 DOLLARS

9-74

(Stamped on face:) "Paid Jan. 22, 1923. Liberty National Bank, Tulsa, Oklahoma" (not shown in photographic reproduction).

Government's Exhibit No. 55.

Government's Exhibit No. 55.



THE LIBERTY NATIONAL BANK

CAPITAL $250,000.00

TULSA, OKLAHOMA

Mr. [illegible] A. Moore,

Tulsa, Okla.

Dear Sir:-

You, [illegible], the owner of the following described stock, I hereby agree to purchase same from you on demand for a consideration of $2,500.00, together with accrued interest on this amount from Dec. 22nd, 1921, at the rate of 7%, and it is further agreed that you hereby consent to my exercising the above option at any time, and that you will not dispose of this stock to anyone else, all [illegible] to be received by you to be returned to me.

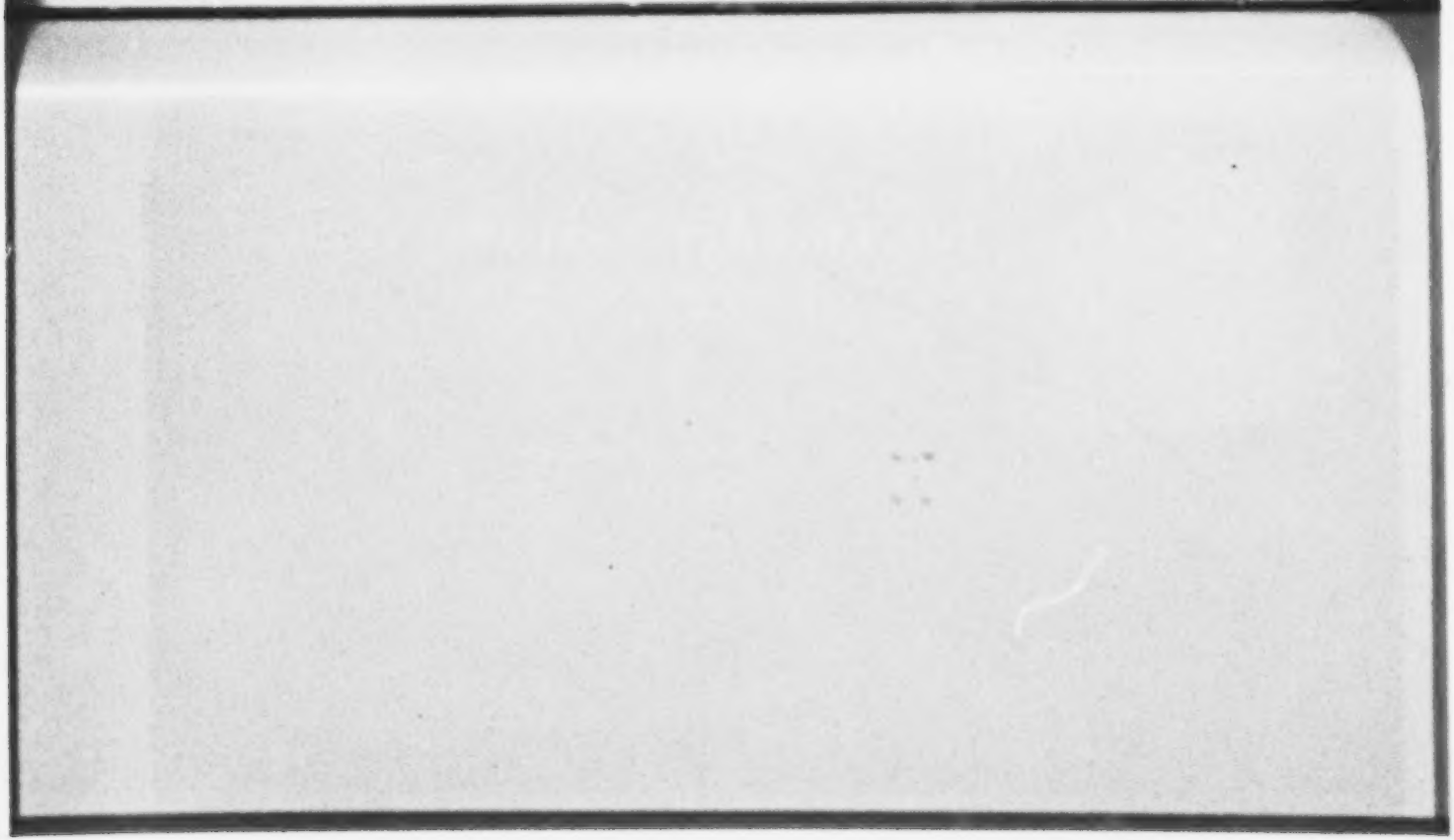
250 Shares Chestnut & Smith Corporation, preferred stock.
125 " Chestnut & Smith Corporation, common stock.
10 " Moon Gasoline Company stock.
200 " Barco Gasoline Company stock.

I hereby agree to reimburse you for any income tax that you might have to pay arising out of this transaction.

Yours truly,

[signature]

I hereby accept all the provisions stated in the above letter.



...income
of this trans-

Yours truly,

hereby accept all the agreements cited in the above letter.

Govt
84

Govt's Ex. 59.

MOON GASOLINE COMPANY

CHECK NO. 4068

LIQUIDATING DIVIDEND TULSA, OKLA. MARCH 15 1923.

PAY TO THE ORDER OF A. M. BALLARD $ 1400.00

PAY $1400 AND 00/100

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN BY VOUCHER. ACCEPTANCE BY ENDORSEMENT CONSTITUTES RECEIPT IN FULL

TO THE EXCHANGE NATIONAL BANK TULSA, OKLAHOMA

NO. 1-10

MOON GASOLINE COMPANY

BY Roy Keane

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Mar. 21, 1923," on back.)

(Endorsed on back:)

To apply on note

A. M. Ballard

Govt's Ex. 60.

MOON GASOLINE COMPANY

CHECK NO. 4041

DIVIDEND #18

TULSA, OKLA. FEB 15 1923 19

PAY TO THE ORDER OF A.M. BALLARD $2500.00

PAY $2500 AND NO/100

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS ABOVE. ACCEPTANCE BY ENDORSEMENT CONSTITUTES RECEIPT IN FULL

THE EXCHANGE NATIONAL BANK
TULSA OKLAHOMA

88 2-10

MOON GASOLINE COMPANY

BY

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Feb. 15, 1923," on back.)

To apply on note

(Endorsed on back:)

Govt's Ex. 61.

VOUCHER NO. _____ CHECK NO. 5085

SUN GASOLINE COMPANY

LIQUIDATING DIVIDEND TULSA, OKLA. MAR 15 1923 191_

PAY TO THE ORDER OF _____ $125.00

PAY $125 AND 00 Cts

THE FIRST NATIONAL BANK
TULSA, OKLAHOMA

4-66

SUN GASOLINE COMPANY

By _____

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Mar. 21, 1923," on back.)

To apply on note

(Endorsed on back:)

Govt's Ex. 62.

VOUCHER NO. _____ CHECK NO 3172

SUN GASOLINE COMPANY

DIVIDEND #24 TULSA, OKLA _____ 191__

PAY TO THE ORDER OF A.M. BALLARD $ 450.00

PAY $450 AND 00 CTS

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS ENTERED BY AUDITOR. ACCEPTANCE BY ENDORSEMENT CONSTITUTES RECEIPT IN FULL

THE FIRST NATIONAL BANK
TULSA, OKLAHOMA

2-6 1-

SUN GASOLINE COMPANY

By _____

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Feb. 15, 1923," on back."

To apply on note

(Endorsed on back:) A.M. Ballard

Govt's Ex. 63.

VOUCHER NO. _____ CHECK NO 5133

SUN GASOLINE COMPANY

Dividend No. 26.
$ 2.50 per share from Surplus
$ 7.50 per share from Depreciation Reserve

TULSA, OKLA. _____ 191__

PAY TO THE ORDER OF A. M. BALLARD $ 50.00

PAY $50 AND 00 Cts

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS ABOVE DESCRIBED. ACCEPTANCE OF PROCEEDS MUST CONSTITUTE RECEIPT IN FULL

TO

THE FIRST NATIONAL BANK
TULSA, OKLAHOMA

66-1

SUN GASOLINE COMPANY

By Roy Kearney

Cy-68

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Jun. 13, 1923," on back.)

(Endorsed on back:) A M Ballard

Govt's Ex. 64.

VOUCHER NO _____ CHECK NO 5189

SUN GASOLINE COMPANY

DIVIDEND NO. 27

FROM DEPRECIATION RESERVE

TULSA, OKLA. AUG. 1 1923 191__

PAY TO THE ORDER OF _____ $25.00

Liberty National Bank
TELLER'S No. 7
SEP 20 1923

PAY 25 AND 00 CTS

THIS CHECK IS IN FULL PAYMENT OF ACCOUNT AS RENDERED UNLESS WITHIN 10 DAYS OF RECEIPT HEREOF ACCEPTANCE TO THE CONTRARY IS RETURNED. ENDORSEMENT CONSTITUTES RECEIPT IN FULL

TO

THE FIRST NATIONAL BANK
TULSA, OKLAHOMA

86-1

SUN GASOLINE COMPANY

By _____

4-62

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Sep. 20, 1923," on back.)

(Endorsed on back:)

To apply on note

J. M. Ballard

US. UNITED STATES OF AMERICA.

725

Govt's Ex. 65.

CHECK NO. 4187

MOON GASOLINE COMPANY

DIVIDEND NO. 21
FROM DEPLETION RESERVE

TULSA, OKLA. SEPTEMBER 20TH, 19 23

PAY TO THE ORDER OF A. F. BALLARD $3,500.00

PAY THREE THOUSAND FIVE HUNDRED AND 00/100

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS STATED. ACCEPTANCE AND ENDORSEMENT CONSTITUTES RECEIPT IN FULL

EXCHANGE NATIONAL BANK
TULSA OKLAHOMA

MOON GASOLINE COMPANY
BY [signature]

(Liberty National Bank Teller's stamp on face. Tulsa Clearing House stamp "Paid, Sep. 22, 1923," on back.)

(Endorsed on back:)

To apply on note
[signature]

Government's Exhibit No. 68.

Federal Reserve Bank of Kansas City, Kans.

~~H Dept E #201~~

INDIVIDUAL (MERCHANT)

FROM Mason Sellers ADDRESS 106 West 5th St.

BUSINESS Oil

TO Liberty National Bank,

FOR THE PURPOSE OF OBTAINING LOANS AND DISCOUNTING PAPER WITH YOU AND OTHERWISE PROCURING CREDIT FROM TIME TO TIME, I FURNISH YOU WITH THE FOLLOWING STATEMENT AND INFORMATION, WHICH IS, AND IS KNOWN BY MY BOOKS TO BE, A TRUE AND CORRECT STATEMENT OF MY FINANCIAL CONDITION AS OF Dec 31st 1929

I AGREE TO AND WILL NOTIFY YOU IMMEDIATELY IN WRITING OF ANY MATERIALLY UNFAVORABLE CHANGE IN MY FINANCIAL CONDITION, AND IN THE ABSENCE OF SUCH NOTICE, OR OF A NEW AND FULL WRITTEN STATEMENT, THIS MAY BE CONSIDERED AS A CONTINUING STATEMENT AND SUBSTANTIALLY CORRECT, AND IT IS HEREBY EXPRESSLY AGREED THAT UPON APPLICATION FOR FURTHER CREDIT THIS STATEMENT SHALL HAVE THE SAME FORCE AND EFFECT AS IF DELIVERED AS AN ORIGINAL STATEMENT OF MY FINANCIAL CONDITION AT THE TIME SUCH FURTHER CREDIT IS REQUESTED.

(FILL ALL BLANKS, WRITING "NO" OR "NONE" WHERE NECESSARY TO COMPLETE INFORMATION)

ASSETS

	Thousands	Hundreds	Cents
CASH on hand and in bank	3	100	00
INVESTMENTS. BONDS AND STOCKS (list on reverse side hereof)			
MERCHANDISE inventory Total values			
" commission " Total values			
" raw material " Total values			
BILLS (trade) RECEIVABLE (not good one year from statement)	16	000	00
ACCOUNTS RECEIVABLE			
TOTAL QUICK ASSETS			
ACCOUNTS (not trade) RECEIVABLE (doubtful) Quick value $ [1] estimated worth			
MACHINERY AND FIXTURES (not $)			
TOWN OR CITY REAL ESTATE (at actual market value)			
COUNTRY REAL ESTATE ___ acres ___ County			
1/8 Int. in 1000 acres with			
4 drilling Wells around same			
& 1/8 in lease of 270 acres			
with well in center	30	000	00
1/16 Int. in 30,000 Acres 8 Mi.			
south of Meridian, Miss.	3	500	00
House & Lot, 3312 Highland Ave	K.C.	17	000	00
TOTAL	69	600.	00

LIABILITIES

	Thousands	Hundreds	Cents
Current bills			500 00
BILLS (trade) PAYABLE, which have not been discounted	15		000 00
BILLS (trade) PAYABLE, given elsewhere (not shown above)			
NOTES PAYABLE, other than for above			
OPEN ACCOUNTS PAYABLE, not due			
" " past due			
OWING TO RELATIVES AND FRIENDS			
DEPOSITS OF MONEY, by customers, employees and others			
LIENS OR INCUMBRANCES on merchandise or other assets (other than real estate mortgages)			
CHATTEL MORTGAGES ON ___			
MORTGAGES on town or city real estate			
MORTGAGES on country real estate			
TOTAL LIABILITIES	15		500.00
NET WORTH	54		100.00
TOTAL	69		600.00

SPECIFY ANY OF ABOVE ASSETS PLEDGED AS COLLATERAL

SPECIFY ANY OF ABOVE LIABILITIES SECURED BY COLLATERAL

CONTINGENT LIABILITY: not included in debts enumerated above UPON ACCOMMODATION PAPER, $ ___ FOR GUARANTEES, $ ___

UPON EXCHANGED PAPER $ ___ FOR BONDS $ ___ UPON NOTES RECEIVABLE OF CUSTOMERS, DISCOUNTED OR SOLD, $ ___

INSURANCE: on merchandise $ ___ buildings $ ___ machinery $ ___ TOTAL INSURANCE

BUSINESS LIFE INSURANCE: to whom payable ___ company ___ amount ___

BUSINESS AND RESULTS: ANNUAL SALES for the year ending ___ 19___ or from ___ 19___ to ___ 19___

	For the same period
GROSS PROFITS on SALES	
OTHER INCOME (including investments)	
EXPENSE of CONDUCTING BUSINESS	
NET PROFIT on SALES	
AMOUNT WITHDRAWN from business for personal use	
AMOUNT CHARGED OFF for DEPRECIATION	
SURPLUS	

(OVER)

(Reverse side of Government's Exhibit No. 68:)

BANK ACCOUNTS:

MORTGAGES:

BUILDINGS: cost $

TERMS OF SALES

TERMS OF PURCHASES

TIME OF YEAR when NOTES and ACCOUNTS RECEIVABLE or CUSTOMERS UNCOLLECTED

TIME OF YEAR when STOCKS or MERCHANDISE

TIME OF YEAR when LIABILITIES

STATEMENT:

VERIFICATION:

NAME and DATE OF AUDIT

BY WHOM and DATE

REAL ESTATE

DESCRIPTION	IMPROVEMENTS	VALUE		MORTGAGES	EQUITY
		ASSESSED	CASH		
House & lot 3312 Highland Ave.Kansas City			17000		
1/8 Int.in 1000 acres with 4 drilling wells					
~~secured upon brick~~ dwelling house of 220 ~~[illegible]~~					
with well in center			$		
1/8 Int.in 30,000 acres 8 Miles S.Meridian			3800		

IN WHOSE NAME IS TITLE TO ABOVE REAL ESTATE HELD

IS REAL ESTATE HELD IN FEE SIMPLE OR LEASEHOLD?

DESCRIBE HERE ALL BONDS AND STOCKS OWNED

OTHER DATA

THE UNDERSIGNED HEREBY SOLEMNLY CERTIFY AND DECLARE THAT THE ABOVE STATEMENT AND REPRESENTATIONS CONSTITUTE A TRUE AND ACCURATE ACCOUNT OF MY FINANCIAL CONDITION AS OF THE DATE FIRST ABOVE GIVEN.

DATE Oct. 1922 19

(SIGNATURE) Mason Sutton

WITNESS J.C. Hite

(ADDRESS)

STATEMENTS SUBMITTED TO FEDERAL RESERVE BANK MUST EITHER BE SIGNED ORIGINALS OR CERTIFIED COPIES. IF COPIES ARE FURNISHED, FOLLOWING CERTIFICATE MUST BE OFFICIALLY SIGNED BY MEMBER BANK.

WE HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF A SIGNED FINANCIAL STATEMENT OF THE ABOVE MENTIONED INDIVIDUAL, FIRM OR CORPORATION NOW ON FILE IN THIS BANK.

(NAME OF MEMBER BANK)

(OFFICIAL SIGNATURE)

(TITLE)

STATEMENTS CERTIFIED BY CHARTERED PUBLIC ACCOUNTANTS MAY, IN THE DISCRETION OF THE EXECUTIVE COMMITTEE OF THE FEDERAL RESERVE BANK, BE ACCEPTED

(OVER)

Govt's Ex. 66.

Govt's Ex. 66.

X-9-48

$ _____ TULSA, OKLAHOMA, December 18th 1922.

- - - - THIRTY DAYS - - - - AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

60

THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - - - FIFTEEN THOUSAND & NO/100 - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM date AT THE RATE OF - - - PER CENT. PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

Maxon Mitten

DUE _____

P. O. _____

NO. 15077 (Gov Ex #34)

(Endorsed on back:) (Stamp:) Paid Jul 7 1923. The Liberty National Bank, Tulsa, Oklahoma. 4-1-23 Inst Pd to 5-18-23 6-11-23 Inst pd to 7-14-23.

US. UNITED STATES OF AMERICA.

727

Defendants' Exhibit 1.

Asa E. Ramsey, President. Chas. W. Brewer, Vice President. Samuel H. Smith, Vice President. Cyrus S. Avery, Vice President. C. H. Seger, Vice President. Darwin H. Pratt, Cashier. Alva C. Pickens, Ass't Cashier. H. P. Schaber, Ass't Cashier.

The Security National Bank

12043

Tulsa, Oklahoma, November 10, 1923.

Federal Reserve Bank,

Kansas City, Mo.

Gentlemen: This bank, having purchased the assets of the Liberty National Bank of Tulsa, desires to retire the Federal Reserve Bank Stock held by the said Liberty National Bank of Tulsa.

We are, therefore, enclosing certificate #3358 for 210 shares, bearing our endorsement, and will ask that you kindly place the proceeds of this certificate to the credit of our Reserve Account.

If there is any other receipt or instrument to be executed in connection with the retirement of this stock, we shall be glad to comply with your wishes in the matter, upon receipt of proper instruments.

Yours very truly,

ACP/c A. C. PICKENS,

ACP/c Ass't Cashier.

Received Nov. 13, 1923, 9:15. Registered mail.

Defendants' Exhibit 2.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Oaths of Directors of The Liberty National Bank of Tulsa, Tulsa, Oklahoma, of the year 1923, and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these pres-

ents at the Treasury Department, in the City of Washington and District of Columbia, this 11th day of May, A. D. 1925.

J. W. McINTOSH,
Comptroller of the Currency.

(Seal)

NMH JOL Form 1980 3-23-25—500.

Treasury Department

Office of Comptroller of Currency

Organization—Form 1900

Ed. 10,000—Oct. 7-22.

Received Jan. 13, 1923. Comptroller of the Currency.

Joint Oath of Directors.

State of Oklahoma,
County of Tulsa—ss.

We, the undersigned, Directors of The Liberty National Bank, located at Tulsa, Oklahoma, being citizens of the United States, and all residents of the State of Oklahoma, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated or in any way pledged as security for any loan or debt.

1. A. E. Lewis
A. E. Lewis
2. W. L. Lewis
W. L. Lewis
3. E. A. Ross
E. A. Ross
4. H. N. Greis
H. N. Greis
5. John T. Kramer
John T. Kramer

Subscribed and sworn (affirmed) to before the undersigned this 9th day of January, 1923. Olive McQueen, Notary Pub-

lic. Official Seal of Officer. Olive McQueen. My commission expires November 19th, 1924.

Note—Each director when elected must take the oath of office and, under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper state, county, or court official to the effect that such officer is authorized to take acknowledgments must be attached.

Defendants' Exhibit 3.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Oaths of Directors of The Liberty National Bank of Tulsa, Tulsa, Oklahoma, of the year 1923, and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 11th day of May, A. D. 1925.

J. W. McINTOSH,
Comptroller of the Currency.

(Seal)

NMH JOL Form 1980 3-23-25—500.

Treasury Department

Office of Comptroller of the Currency

Organization—Form 1900

Ed. 9,900—Sept. 12-21.

Joint Oath of Directors.

State of Oklahoma,

County of Tulsa—ss.

We, the undersigned, Directors of The Liberty National Bank, located at Tulsa, Oklahoma, being citizens of the United States, and all residents of the State of Oklahoma, do, each

for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated or in any way pledged as security for any loan or debt.

1. A. E. Lewis
2. W. L. Lewis
3. E. A. Ross
4. H. N. Greis
5. John T. Kramer

Subscribed and sworn (affirmed) to before the undersigned this 9th day of February, 1922. Adeliade B. Reichel, Notary Public. (Official Seal of Officer) My commission expires Dec. 23rd, 1924.

Note—Each director when elected must take the oath of office and, under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper state, county, or court official to the effect that such officer is authorized to take acknowledgments must be attached.

Defendants' Exhibit 4.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Oaths of Directors of The Liberty National Bank of Tulsa, Tulsa, Oklahoma, of the year 1921, and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these pres-

ents at the Treasury Department, in the City of Washington and District of Columbia, this 11th day of May, A. D. 1925.

J. W. McINTOSH,
Comptroller of the Currency.

(Seal)

NMH JOL Form 1980 3-23-25—500.

Treasury Department

Office of Comptroller of the Currency

Organization—Form 1900

Ed. 9,800—Sept. 15-20.

Joint Oath of Directors.

State of Oklahoma,

County of Tulsa—ss.

We, the undersigned, Directors of The Liberty National Bank, located at Tulsa, Oklahoma, being citizens of the United States, and all residents of the State of Oklahoma, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated or in any way pledged as security for any loan or debt.

1. A. E. Lewis
2. W. L. Lewis
3. E. A. Ross
4. H. N. Greis
5. John T. Kramer
6. Dr. N. W. Mayginnes

Subscribed and sworn (affirmed) to before the undersigned this 29th day of January, 1921. Adeliade B. Reichel, Notary Public. (Official Seal of Officer.) My commission expires Dec. 23rd, 1924.

Note—Each director when elected must take the oath of office and, under section 5147, U. S. R. S., the oath should be

transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper state, county, or court official to the effect that such officer is authorized to take acknowledgments must be attached.

Defendants' Exhibit 5.

Certificate for Certified Copy.

Treasury Department, Office of the Comptroller of the Currency—ss.

Under the provisions of section 884 of the Revised Statutes of the United States, I, J. W. McIntosh, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete photostat copy of the original Oaths of Directors of The Liberty National Bank of Tulsa, Tulsa, Oklahoma, of the year 1920, and of the whole of such original on file and of record in this office.

In Testimony Whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 11th day of May, A. D. 1925.

J. W. McINTOSH

(Seal) Comptroller of the Currency.

NMH JOL Form 1980 3-23-25—500.

Treasury Department

Office of the Comptroller of the Currency

Organization—Form 1900

Ed. 9,500—Sept. 24-19.

Joint Oath of Directors.

State of Oklahoma,

County of Tulsa—ss.

We, the undersigned, Directors of The Liberty National Bank, located at Tulsa, Okla., being citizens of the United States, and all residents of the State of Oklahoma, do, each for himself, and not one for the other, solemnly swear (affirm) that we will severally, so far as the duty devolves on us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly per-

mit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and, each for himself, does solemnly swear (affirm) that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated or in any way pledged as security for any loan or debt.

1. A. E. Lewis
2. W. L. Lewis
3. E. A. Ross
4. C. A. Sanderson
5. John T. Kramer
6. H. N. Greis

Subscribed and sworn (affirmed) to before the undersigned this .... day of January, 1920. ....., Notary Public. (Official Seal of Officer) My commission expires.....

Note—Each director when elected must take the oath of office and, under section 5147, U. S. R. S., the oath should be transmitted to the Comptroller of the Currency immediately after the election. If the officer administering the oath has no seal, a certificate of the proper state, county, or court official to the effect that such officer is authorized to take acknowledgments must be attached.

Defendants' Exhibit No. 6.

March 27th, 1923.

Comptroller of the Currency,
Washington, D. C.

Dear Sir: In answer to your letter relative to our examination completed February 3rd, wish to state that the Central Torpedo Company note is now secured, also the Mingo Company note has been secured. These are included in the seven loans listed on page 3 in the aggregate amount of $107,-609.34. All of the notes listed on page 3, as described above, are supported by financial statements, but are corporations in which some one of our directors own a portion of the stock.

The E. M. Arnold and Edwin Walter Arnold notes listed on page 6 will very likely be reduced within a short time, as E. M. Arnold has a deal pending and if it is consummated he will reduce his paper considerably. Also the Edward Soph and the Edward Soph Company line will very likely be re-

duced within the near future, as Mr. Soph has platted a portion of his land and contemplated selling it at once.

The C. L. Goodale real estate loan has now been disposed of but is held as collateral. The W. H. Wallace real estate loan will be due May 8th, and we have been promised that this loan will be paid or attended to in such a manner that it will come under the head of lawful real estate loans.

The George E. Reeves indebtedness of $11,000.00 is in two notes of $5500.00 each, one of which is secured by a first mortgage on his property and is a legal real estate loan. The other we made for a period of only five days unsecured, as he was intending to borrow this amount from a private individual; however, he fell down on this loan and in order to secure ourselves we took a second mortgage on this same property. We will endeavor to get some additional collateral from him.

The note of Director H. N. Greis of $27,500.00 has been paid.

Yours truly,

W. L. LEWIS,
A. E. LEWIS,
E. A. ROSS,
JOHN T. KRAMER,
Directors.

cc—L. K. Roberts, H. C. Borgman.

Defendants' Exhibit 7.

April 18th, 1922.

Comptroller of the Currency,
Washington, D. C.

Dear Sir: Your office letter of April 6th was received and read and discussed at the monthly Directors' meeting.

We note that the principal criticism appearing is the large lines of credit. Wish to state that these lines are being reduced, and that we will continue to reduce them as rapidly as possible, and that monthly payments will be made on the loans.

Since your Examiner was here we have obtained financial statements on practically all the large borrowers where the note is not secured.

We have financial statements from the lines classified as belonging to our directors as follows:

	Net Worth	Liability	Owed to Liberty National Bank
A. E. Lewis	$1,184,901.61		
W. L. Lewis	941,578.34		
The Lincoln Company	400,000.00	$33,000.00	$33,000.00
The Mingo Company, secured	100,000.00	33,000.00	33,000.00
The Ray Gasoline Co., "	150,000.00	33,000.00	33,000.00
The Sanders Company, "	100,000.00	33,000.00	33,000.00
Albion Oil Company	177,763.03	38,342.23	32,900.00
Big Fifty Oil Company	92,473.61	33,423.89	32,600.00
Beaver Drilling Company	126,944.15	37,785.40	32,500.00
Creo Oil Company	450,000.00	73,807.86	32,500.00

We also have collateral in our possession belonging to E. A. Ross, which is pledged as security for any loans on which he may be maker or endorser, which collateral has a market value at the present time of $125,000.00.

None of the above notes are excessive. All of the above loans are entitled to the credit by reason of balance carried with the Liberty National Bank.

If there is any question in your mind as to the above financial statements your Examiner can verify them at his next examination, and we will gladly take him in a car and drive to the various properties. There has been no law violated in the making of any of those loans.

This business is profitable to the Liberty National Bank, and any bank in Tulsa would gladly handle it on account of its being a profitable business, and we do not feel that our bank should be penalized by asking that this paper be removed or even reduced in material amounts at this particular time when it has been clearly shown that the paper is all good and collectible, and that the business is profitable to the bank, and the only criticism that could be made is on account of the Directors being interested in some of these corporations. As we have told you on several occasions before, several of the loans which were classed as Directors' paper is not owed by the Directors, nor by any of the corporations in which the Directors are interested, and does not bear their endorsement, but is merely some relative of the Director or was classed as the Director's paper on account of being secured by stock in a company in which the Director was interested. The following are the notes referred to:

R. C. Lamprich	$33,000.00
Mildred B. Lewis	16,384.00
E. G. Lewis	23,750.00
E. O. Lewis	28,900.00
G. H. Lewis	27,800.00
W. M. Black	32,864.15
K. C. Dorn	31,465.48
Total	$194,163.63

The above seven notes are amply secured and were not criticised on account of their being doubtful, but were criticised on account of being classed as Directors' paper. They are not owed by the Directors nor by any corporation in which the Directors are interested, and should not be classed as Directors' paper. However, if, after our explanation relative to these last named loans, your office still considers them as being properly classified as Directors' paper, we will include them in the list to be reduced.

The illegal real estate loans of Anna Chamberlin have been attended to.

The overdrafts have been reduced, and we will make every effort possible to keep them down in the future.

A Discount Committee has been appointed as per your request, which includes a Director who is not an active official.

The slow and doubtful paper summarized on page #14 will receive our closest attention.

The Directors have held at least monthly meetings.

A. E. and W. L. Lewis own stock in the Chestnut & Smith Corporations, which they expect to sell within the next sixty or ninety days. Should this stock be disposed of a reduction will be made of between $75,000.00 and $100,000.00 on corporations in which they are interested.

We trust by reason of obtaining the financial statements requested by your Examiner, and from the fact that we are reducing the loans criticised, that you will take us off of the frequent examination list.

Yours truly,

W. L. LEWIS,
A. E. LEWIS,
E. A. ROSS,
JOHN T. KRAMER,
W. N. GREIS,
Directors.

Defendants' Exhibit 8.

August 2nd, 1922.

Comptroller of the Currency,
Washington, D. C.

Dear Sir: We have yours of the 7th ult enclosing report of your examiner as of June 29th. We also have your letter of July 14th relative to same.

The report was taken up and fully discussed at the Board meeting today.

We do not consider the loan, which your examiner listed as excessive, as being an excessive loan. This is the same loan which we discussed with you in our previous letters about six or eight months ago. Since that time your examiner, Mr. Hackney, was here, and he read the correspondence on same and examined the notes and mortgages, and said he could see no reason for its being classed as excessive and classified it as a legal real estate loan.

The facts relative to these loans are as follows: Mr. E. J. Brennan owns real estate which is in his name and we loaned him money on same, which loan comes within section 24 of the Federal Reserve Act. His wife also owns real estate which stands in her name, and which real estate she has owned for a number of years and paid for with funds belonging to Mrs. Brennan, and we have extended her a loan which also comes within section 24 of the Federal Reserve Act.

These are two separate loans and are secured by separate pieces of real estate. In each instance the real estate is owned by the maker of the note. The mortgages are signed by both Mr. and Mrs. Brennan in each instance, as we usually have the wife to join with the husband in signing a mortgage on real estate, or the husband to join the wife when the land is in the wife's name. However, we could write up a new mortgage and not have the wife to join the husband, or vice versa, if your office so desires, as none of the real estate securing these notes is any part of their homestead. Their business and holdings are handled separately, and the money which was borrowed by Mr. Brennan and Mrs. Brennan was credited to their respective and separate accounts and used by them separately.

Relative to the cash items which your examiner classed as irregular cash items, we are at a loss to know why any such classification was made. Our total cash items on the date of the examination was $4476.00. Of this amount $3868.34 was

cashier's checks on local banks in payment of Oklahoma items not available. This is the custom of all the local banks to handle their Oklahoma items in this manner. Each bank sends them to a local bank, who has a correspondent in the town on which the Oklahoma item is drawn, and they issue us a cashier's check for same, which we clear on them the third day following.

The other items in the total amount of $507.66 consisted of the following: Eleven late debit items in the amount of $181.52, which were charged to the customers' accounts; Liberty Bond coupons in the amount of $15.82; a wire from Huntington, Ind., asking that we pay a man $25.00; twelve post office money orders in the amount of $49.72; various checks which were also to be charged to our customers, which made up the small difference, with the exception of a draft for $30.00 drawn on Sapulpa State Bank on which the endorsement was forged. This last item, however, was paid on the date of your examination and so reported to your examiner. Also included in these cash items was one item of $27.62, being a draft drawn by C. V. Johnson, which your examiner has listed as a loss. However, this was paid on the last day of his examination and was so reported to him by our assistant cashier. All of the cash items which we had at that time have been paid; in fact, all of them were paid the following day, except the cashier's checks which were taken in payment of Oklahoma items.

The loan which he has classed as irregular real estate loan is the same loan which we discussed with your office some time ago, being the W. L. Burlison note. We have other security on this loan and we consider his note good and collectible without any security whatever. However, as we had carried this loan for some time Mr. Burlison suggested giving us a mortgage on real estate in addition to our collateral and we took this mortgage. The real estate, however, is not located in this district and was criticised for that reason. However, if your office desires we will release this real estate mortgage, but as we wrote you before we felt it was just strengthening our loan a little bit more and we thought we did the right thing by taking this additional collateral in the manner we did.

Relative to the deficiency in the reserve, this was an error on the part of our junior officers in figuring this reserve. We had a deposit on which we were paying interest which the depositor agreed to leave for a period of six months and we had a letter to this effect, and we were counting this as a time deposit. However, in the meantime the party transferred this

to a certificate of deposit and our junior officers failed to deduct the amount of time deposit which he previously carried, hence this was counted as a time deposit twice. We immediately made this deficiency good and will continue to carry the required amount.

Relative to the large items listed on page 6, and on which we agreed to have reduced $50,000.00 per month for a period of six months, wish to state that the following notes in the total amount of $117,495.93 has been paid in cash, and we hope to have the full amount of the $300,000.00 reduced before the expiration of the six months:

K. C. Dorn	$ 3,465.48
"	28,000.00
E. G. Lewis	8,000.00
Big Fifty Oil Co.	15,000.00
"	12,500.00
Lincoln Company, Inc.	8,300.00
Mingo Company, Inc.	10,000.00
Big Fifty Oil Co.	5,000.00
Albion Oil Co.	7,500.00
R. L. LeBus	4,720.45
Beaver Drilling Co.	8,500.00
Mildred B. Lewis	510.00
Creo Oil Company	6,000.00
Total	$117,495.93

The item of $3000.00 which was carried as real estate when your examiner was here has been paid in cash. Also the P. F. Dixon note in the amount of $300.00 was paid in cash. There has been a payment of $1625.00 made on the Walter S. Crouch note, there having been a total of $3500.00 paid on his note since it was first listed under large loans by your examiner at a previous examination. At that time Mr. Crouch agreed to pay $500.00 per month until the note was liquidated in full, and he has made his payments as stated above.

There has been a cash payment of $515.63, in addition to a payment of interest, paid on the W. H. Hendee note. There has also been a cash payment made of $199.87 on the D. L. Dobie note, in addition to a payment of interest. There has also been a cash payment of $474.78 made on the Hugh McDonnell note, in addition to a payment of interest. There has also been a cash payment of $250.00 made on the Sabine Oil & Marketing Company note. All of the last named above notes were classed under large lines under schedule 7.

The W. R. Miller note in the amount of $31,740.03 has now been secured. This note was criticised, stating that the statement did not justify such a loan.

Relative to the financial statements, wish to state that we had obtained a great many financial statements and had endeavored to have the proper information on file which your examiner would require. However, in some instances he said the information we had was not complete enough, and in such cases we will get the further information he desires, and endeavor to get sufficient financial statements to meet his requirements.

We had a directors' meeting at which all the directors were present on July 22nd. However, owing to lack of time the report of your examination was held over until today's meeting.

The R. C. Lamprich note in the amount of $32,000.00 which was carried at the Exchange National Bank, our city, and secured by bank stock of the Liberty National Bank, has had a payment of $21,000.00 made on same, Mr. Lamprich having sold 105 shares of bank stock at $200.00 per share and applied the proceeds on his note. This note was included in the item of $55,000.00 which your examiner stated was owed by Mr. Lamprich outside of this bank.

Yours truly,

W. L. LEWIS,
E. A. ROSS,
A. E. LEWIS,
H. N. GREIS,
JOHN T. KRAMER.

Defendants' Exhibit 9.

March 11th, 1922.

Comptroller of the Currency,
Washington, D. C.

Dear Sir: In connection with the examination of The Liberty National Bank just completed, the undersigned directors wish to make the following statements with reference to matters criticised.

The large lines of credit considered concentration of credit to the directors and their interests: As an explanation of

these lines criticised, we would like to say that in the case of Director Ross, certain lines being loans to corporations in which he is interested, we consider these companies, the Oil State Gasoline Co., the Big Fifty Oil Co., the Creo Oil Co., the Beaver Drilling Co., and the Albion Oil Co., as worthy of this line of credit regardless of Mr. Ross' affiliation and interest in them.

These companies show considerable strength and earning power. They have all maintained substantial balance with us for a number of years. We will at once obtain financial statements from all of these companies that will show them to be desirable credit risks. These statements will be forwarded to you if it is so desired. These loans were not made because of Mr. Ross' affiliation with the companies and the bank, but were considered as warranted in view of the desirable character of the loans, as well as the business to be obtained through the connection with these companies. However, these loans are not to be carried indefinitely without reduction, as their borrowings have been necessitated by payment of their income taxes. They have considerable earning power and regular reductions will be made on each one of these loans from time to time

Loans charged to Mr. Ross' line, W. M. Black and K. C. Dorn, are loans that are secured by stock in the companies in which Mr. Ross is interested. The stock securing these loans is of ample value and is marketable stock. These loans are not dependent upon Mr. Ross as a guarantor or endorser, and Mr. Ross is only endorser on $3465.48 of the Dorn loan and is not endorser on the Black loan. In view of the security back of these loans we consider them desirable investments of the bank.

As to the direct obligations of Mr. Ross which includes his endorsement of the Emily A. Ross note, which note is partially secured by marketable collateral, the worth of the maker herself justified this loan. However, regular reductions will be made on this loan, as well as on the personal loan of E. A. Ross.

The Choctaw Portland Cement Company loan, endorsed by E. A. Ross, appeared to be a desirable investment at the time the loan was made. However, at this time the loan is not to be considered desirable for the reason that the company is being liquidated. It is thought that there will be sufficient assets to pay off all of their obligations, and it will not be necessary for Mr. Ross to pay this on account of his endorsement.

In regard to the line charged to A. E. Lewis and W. L. Lewis: The loans to the Lincoln Company, Mingo Company, Ray Gasoline Co., and the Sanders Company, which are owned by A. E. and W. L. Lewis, these loans are criticised as unwarranted. However, they are secured by stock which represents in each case values several times in excess of their obligations and their only obligations are at the Liberty National Bank. These companies all have substantial earning capacity as well as net worth. All of these loans are to be reduced regularly. We are not able to say how much the reductions will be because of the uncertainty of the net earnings. However, the reductions will be substantial and the property held by these companies is of a character that will increase in value and make the loans appear desirable at all times.

The loan of A. E. Lewis, which has only been in the bank a few days, will be paid today.

The loans of R. L. LeBus, R. C. Lamprich, and Mildred B. Lewis are secured by stock and real estate mortgages, which makes them safe loans even though criticised as unwarranted. However, regular reductions are to be applied upon each one of them.

The loans of E. O. Lewis and G. H. Lewis are both secured by marketable collateral or real estate mortgages. The loan of E. O. Lewis is criticised as unwarranted because of it being a non-resident and non-customer. However, we consider the security desirable and of a liquid character and a good investment for the bank. The loan of G. H. Lewis is partly secured by chattel mortgage and additional security in the form of real estate mortgage. There is ample value back of this loan and we consider it a safe investment.

The E. G. Lewis loan, which is endorsed by A. E. and W. L. Lewis, this loan is to be reduced. The balance is to be secured by farm and city real estate mortgage which will conform as a lawful real estate loan for the bank to make and will not bear the endorsement of either W. L. or A. E. Lewis.

The A. R. Mitchell loan, which is endorsed by W. L. Lewis, we are promised a reduction of $15,000.00 on this loan at once, and the balance to be secured by real estate mortgage which will conform as a lawful real estate loan.

These different items are explained in order to show that the loans are safe investments without liability of our directors. However, it is our intention to reduce these loans as fast as we are able to do so and thereby conform with the requirements of your department.

In regard to other matters criticised, the past due notes and loans classed as slow, some of which are considered doubtful in part, will receive our attention. Reduction will be made wherever possible and additional security will be obtained in order that these loans may not develop into losses.

One excess loan, which is slightly excessive on account of interest added of a renewal note, has been reduced by payment to within the lawful limit. This was an oversight, but excessive loans will not be permitted at any time.

The real estate loans classed as unlawful will be removed at once.

The overdrafts, which are considered excessive and objectionable, are temporary and a very few of them make the large total amount. These will be collected at once and carefully restricted in the future.

The irregular cash item, being ticket carried representing interest earned but not collected, is to be adjusted by charging this to a general account on the books for a short time until interest on a few demand notes now due and payable is collected.

We are making an effort to obtain credit information on all of our large unsecured loans. We intended within a short time to have financial statements in our files in support of all unsecured lines of credit.

Yours truly,

A. E. LEWIS,
W. L. LEWIS,
E. A. ROSS,
JOHN T. KRAMER,
H. N. GREIS,
Directors.

Defendants' Exhibit 10.

VOUCHER NO.

THE LIBERTY NATIONAL BANK 86-9-10 No.

TULSA, OKLAHOMA, April 7th, 1922

PAY TO THE ORDER OF W. L. [illegible] $ 10,000.00 DOLLARS

[illegible] THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN HEREON. ACCEPTANCE BY INDORSEMENT CONSTITUTES RECEIPT IN FULL

John T. Kramer S.O.L.

6746

Defendants' Exhibit 11.

VOUCHER NO

THE LIBERTY NATIONAL BANK 86-9-10 No.

TULSA, OKLAHOMA, April 7th 102 2.

PAY TO THE ORDER OF W. L. LEWIS $15,000.00

[redacted] DOLLARS

John T. Kramer Sec.

(Endorsed on back:) W. Lewis

Defendants' Exhibit 12.

VOUCHER NO

THE LIBERTY NATIONAL BANK 86-9-10 **No.**

TULSA, OKLAHOMA. April 7th, [illegible] 1924

PAY TO THE ORDER OF W. L. LEWIS $5,000.00

LIBERTY $5,000 AND 00 CTS. DOLLARS

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN HEREON ACCEPTANCE BY INDORSEMENT CONSTITUTES RECEIPT IN FULL

[illegible]

John T. Brown S.P.A.

(Endorsed on back:)

W. Lewis

Sept 8 13

Defendants' Exhibit 13.

Y) #1

$ 30,000.00 TULSA, OKLAHOMA, April 8th, 1922. 191

[redacted] - - - - ON DEMAND - - - - - - AFTER DATE I WE OR EITHER OF US PROMISE TO PAY TO THE ORDER OF

JOHN T. KRAMER

- - - - - - THIRTY THOUSAND & NO/100 - - - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT THE OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM [illegible] AT THE RATE OF [illegible] PER CENT PER ANNUM. THE MAKERS AND ENDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US AGREE TO PAY TEN PER CENT OF THE TOTAL AMOUNT MADE HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE

P.O.

No. Photographed 5-14-23 WH Manager

W. Lewis

A. Lewis

(Same Exh #16) D-58

$ 10,000.00 / 1000 — 166 — TULSA, OKLAHOMA, June 24th, - - - 19 21.

- - - ON DEMAND - - - - - - - - - AFTER DATE, I, WE, OR EITHER OF US, PROMISE TO PAY TO THE ORDER OF

$38,000 Edward Soph.

at THE LIBERTY NATIONAL BANK, TULSA, OKLAHOMA

- - - - - - - - - Forty THOUSAND AND NO/100 - - - - - - - - - - - - - DOLLARS

FOR VALUE RECEIVED, NEGOTIABLE AND PAYABLE AT OFFICE OF THE LIBERTY NATIONAL BANK OF TULSA, OKLAHOMA, WITH INTEREST FROM Date AT THE RATE OF 6 PER CENT. PER ANNUM. THE MAKERS AND INDORSERS HEREBY SEVERALLY WAIVE PRESENTMENT FOR PAYMENT, NOTICE OF NON-PAYMENT, PROTEST AND NOTICE OF PROTEST, AND AGREE THAT EXTENSIONS OF TIME FOR PAYMENT MAY BE GRANTED BY THE HOLDERS HEREOF WITHOUT NOTICE. IN CASE OF LEGAL PROCEEDINGS TO COLLECT THIS NOTE, OR IN CASE THIS NOTE IS HANDED TO AN ATTORNEY FOR COLLECTION, I, WE, OR EITHER OF US, AGREE TO PAY TEN PER CENT. OF THE TOTAL AMOUNT NAMED HEREIN, ADDITIONAL, AS ATTORNEY'S FEES.

DUE _____ W L Lewis

P. O. _____ Edwin Lewis

NO. _____

April 7-22 Paid $700--

W E Lewis

April 26-22 Int Pd to date

(Endorsed on back of Defendants' Exhibit 16:)

Defendants' Exhibit 50.

G-24 — 11125

86-9-10

CUSTOMER'S DRAFT.

THE LIBERTY NATIONAL BANK

TULSA, OKLAHOMA, 14, 191__ No.

PAY TO THE ORDER OF

A. E. LEWIS, ----- $ 20,000.00

VAT'L BANK $20000AND00 CTS. DOLLARS

To EMPIRE TRUST CO.,

NEW YORK, N. Y.

C. F. Powell

68. UNITED STATES OF AMERICA.

751

(Endorsed on back of Defendants' Exhibit 50:)

(G-2)

Gen'l Bal #1214

86-9-10

CUSTOMER'S DRAFT.

THE LIBERTY NATIONAL BANK

TULSA, OKLAHOMA. MAY 191 No.

PAY TO THE ORDER OF A. E. LEWIS, $ 4,495.00

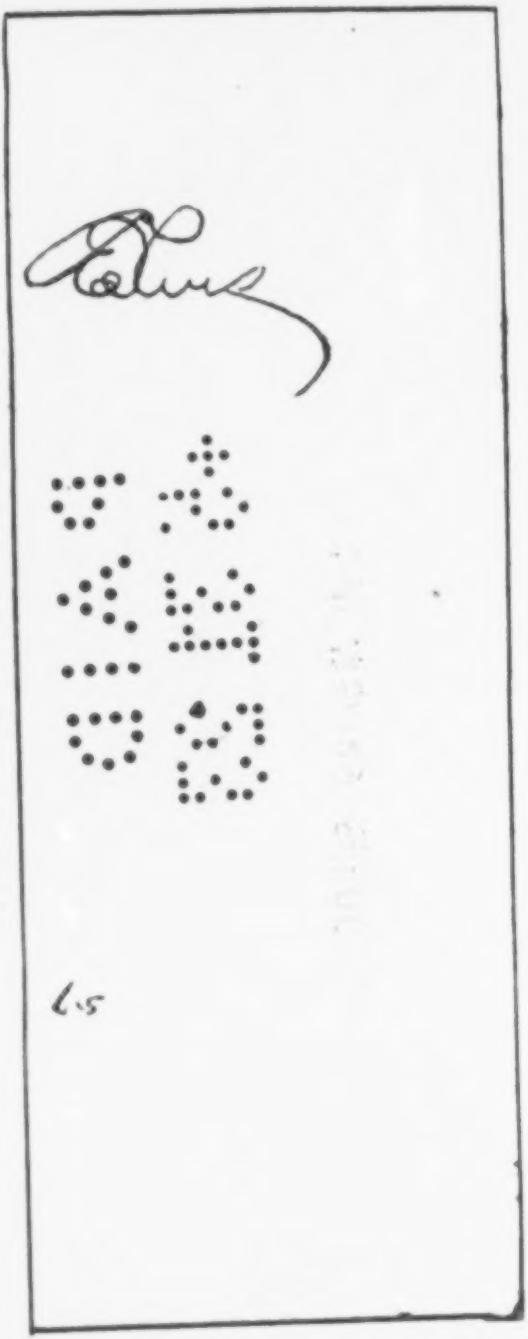
LIBERTY NAT'L BANK 4495 AND 00 Cts DOLLARS

To EMPIRE TRUST CO.,

NEW YORK, N. Y.

C. J. Powell.

U. S. UNITED STATES OF AMERICA



(Endorsed on back of Defendants' Exhibit 51:)

Defendants' Exhibit No. 17.

Incorporated Under the Laws of the United States.

Number 186 Shares 75

The Liberty National Bank of Tulsa.

Capital Stock $250,000.00.

This certifies that Simon W. Knoten is the owner of Seventy-five Shares of the Capital Stock of The Liberty National Bank, Tulsa, Oklahoma, transferable only on the books of the corporation in person or by attorney on surrender of this Certificate properly endorsed.

In Witness Whereof, the said corporation has caused this Certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 16th day of December, A. D. 1922.

Shares $100.00 each.

A. E. LEWIS, President.

(Seal) R. C. LAMPRICH, Cashier.

(On back of Defendants' Exhibit 17:)

For value received, ... hereby sell, assign, and transfer unto ..... Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint ..... attorney to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated ....., 19...

Simon W. Knoten.

In presence of .....

Notice: The signature of this assignment must correspond with the name as written upon the face of this certificate in every particular, without alteration or enlargement, or any change whatever.

Defendants' Exhibit No. 18.

$10,000.00
Tulsa, Oklahoma, June 16th 1923
AFTER DATE I WE OR EITHER OF US PROMISE TO PAY TO THE ORDER OF
DUE
P. O.
No.
DEFENDANT'S EXHIBIT 37

Defendants' Exhibit 20.

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 20th. day of November 1923, by and between E. G. Lewis, party of the first part and A. M. Ballard and R. A. Koons, parties of the second part:

W I T N E S S E T H

That in consideration ofthe sum of Fourteen Thousand Dollars, ($14,000.00 in cash, paid by firstpparty to second parties, receiptoof which is hereby acknowledged, second parties agree that this amount will be applied against the following notes now being held by the Security National Bank of Tulsa, Oklahoma:

DATE	Maker	Amount
Dec. 22nd. 1922	A. M. Ballard	$21,750.00
Dec. 22nd. 1922	R. A. Koons	$29,500.00

Second parties further agree that the said Fourteen Thousand Dollars ($14,000.00) is in full settlement of any mis-under-tandingwhich may have been caused by certain letters dated Dec.22nd.1922, from A. E. Lewis to second parties, the original terms of which were accepted by said second parties, as to the method of applying divdends from stock securing the above notes, it being the understanding of second parties that all dividends were to applied on notes.

Second parties futher agree that all dividends received from the above mentioned stock from Nov. 20th. 1923 to May 20th, 1924 will be applied on the above notes on or before May 20th. 1924 on which date they agree to transefer or cause to be transfered to E. G. Lewis all of the stocks securting said notes, upon his payment of the balance then due on said notes, together with all unpaid interest to that date and any taxes which second parties may have been required to pay on account of this transaction. In the event first party does not exercise his option to purchase this stock on the above terms, on or before May 20th 1924, said stock becomes the undisputed property of the second parties subject only to the claim on the Security National Bank of Tulsa, Okla.

In Witness whereof the parties hereto have hereunto set their signatures and seals this day and year first above written

M. H. Silverman

E. G. Lewis

Party of the first part

Witness

M. H. Silverman

Witness

A. M. Ballard

R. A. Koons

Parties of the second part

In consideration of the above agreement, I hereby rescind the contents and waive all of the conditions of the letter of agreement entered into between second parties and myself on December 22nd 1922.

M. H. Silverman

E. G. Lewis

Witness

Defendants' Exhibit 19.

Thomas Chestnut, President.

Jefferson Gasoline Co.

Sun Gasoline Co. Moon Gasoline Co. Victor Gasoline Co.

Barco Gasoline Co.

P. O. Box 413, Tulsa, Oklahoma.

Mr. A. E. Lewis,
1315 So. Boulder,
Tulsa, Okla. Nov. 9th, 1923.

Dear. A. E.: Referring to our conversation last evening relative to the handling of the note transferred from the Liberty to the Security National Bank.

I have thought the matter over very thoroughly and there are only two methods by which the item can be handled to make the transaction clean cut and in justice to me and mine.

The first method is that you arrange to assume the note and make the necessary arrangements with Mr. Ramsey so there will be no objections.

The other is that you pay me the amount that is necessary to reduce the note to a value of the stock at this time and help me arrange with Mr. Ramsey to carry the note applying the dividends as received.

I am sure you will agree that I am not asking too much of you so I am going to expect a call from you tomorrow advising just what you will do. I do not want to wait until the due date of the note to handle it and unless I hear from you tomorrow I will take it for granted that you are not going to help me and will proceed to see what I can do with Mr. Ramsey without your help.

I certainly hope you will look at this matter in the right light and will call me tomorrow.

Yours very truly,

R. A. KOONS.

Defendants' Exhibit 21.

Thos. Chestnut, President, T. K. Smith, Vice President.
A. D. Blackard, Secretary, C. P. Quinlan, Treasurer.

Moon Gasoline Company, Incorporated.

Office: Chestnut & Smith Bldg.
Phone Cedar 2794 P. O. Box 413
Tulsa, Okla. March 15th, 1923.

To the Stockholders of the Moon Gasoline Company:

On account of the recent adjustment of our Income and Excess Profits Taxes for the years 1917 to 1920, inclusive, valuation and depletion of Gas Purchase contracts and changes in depreciation rates, it has been found that certain dividends were declared when there was not sufficient earned surplus available to take care of same.

In such cases, the amount of the dividend in excess of the available earned surplus, is paid from the depreciation or depletion reserve of the company and, according to our interpretation of the law, should be treated as a return of capital not being taxable until such returns have equaled the cost of the stock to the individual stockholder.

For your information and guidance in adjusting your personal Income Tax Returns, you will find below, a statement showing how dividends which were not paid entirely from earned surplus, have been applied on the books of the company:

Date	Div. No.	%	Am't	From Earned Surplus per Share	From Earned Surplus Total	From Reserves per Share	From Reserves Total
Mch. 24, 1917	1	30	$30,000			$30.00	$30,000
July 26, 1917	2	30	30,000			30.00	30,000
Sept. 27, 1917	3	40	40,000	$18.00	$18,000	22.00	22,000
June 25, 1918	6	40	40,000	38.00	38,000	2.00	2,000
Mch. 26, 1918	5	40	40,000	18.00	18,000	22.00	22,000
Sept. 25, 1918	7	50	50,000	34.00	34,000	16.00	16,000
Jan'y 2, 1919	8	100	100,000	75.00	75,000	25.00	25,000
Mch 15, 1921	15	106	106,000	3.00	3,000	103.00	103,000
June 10, 1921	16	12	12,000			12.00	12,000
Oct. 31, 1922	17	125	125,000			125.00	125,000
Feby 15, 1923	18	50	50,000			50.00	50,000
Mch. 15, 1923	19	20	20,000			20.00	20,000
Total paid from reserves to date						457.00	457,000

The enclosed check is to cover return of $20.00 per share from depreciation reserve, payable March 15th, 1923.

Yours very truly,

MOON GASOLINE COMPANY,

By A. D. Blackard, Secretary.

Defendants' Exhibit 22.

MOON GASOLINE COMPANY

CHECK NO. 4138

DIVIDEND NO. 20

4% from Surplus

6% from Depreciation Reserve

TULSA, OKLA. AUGUST 15 1923

46

PAY TO THE ORDER OF A. M. BALLARD $700.00

SEVEN HUNDRED 00 Cts

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN BY VOUCHER. ACCEPTANCE OF ENDORSEMENT CONSTITUTES RECEIPT IN FULL

THE EXCHANGE NATIONAL BANK
TULSA, OKLAHOMA

86-2-10

MOON GASOLINE COMPANY

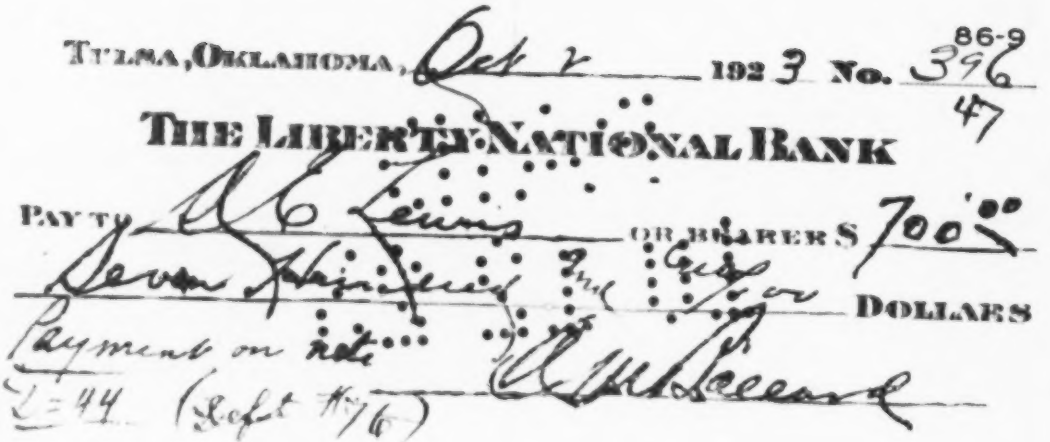
BY Roy Moore

(Dept 475)

U.S. UNITED STATES OF AMERICA. 759

(Endorsed on back of Defendants' Exhibit 22:)

Defendants' Exhibit 23.



TULSA, OKLAHOMA, Oct 1 1923 No. 396 86-9 47

THE LIBERTY NATIONAL BANK

PAY TO A C Lewis OR BEARER $ 700.00

Seven Hundred and 00/100 DOLLARS

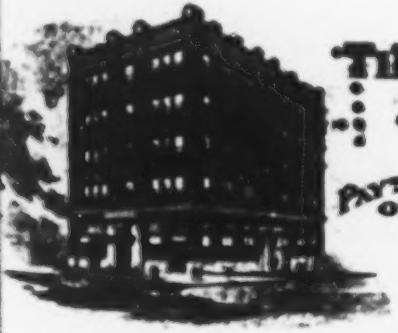
Payment on note

L-44 (Left #76)

A M Record

Defendants' Exhibit 24.

86-9.



THE LIBERTY NATIONAL BANK

No. 22755

PAY TO THE ORDER OF A. P. Mitchell TULSA, OKLA. 192 -

$15,000 00

LIBERTY NAT'L BANK $15000 AND 00 Cts DOLLARS

CASHIER'S CHECK

6-46 (Gov't #26)

W Lewis

(Endorsed on back:) A P Mitchell

Defendants' Exhibit 25.

C. F. Powell
Petroleum Engineer
Suite 918—141 Broadway
New York.

July 14, 1923.

Mr. A. E. Lewis,
The Liberty National Bank,
Tulsa, Oklahoma.

Dear Allie: Your letter of July 9th just received. I had quite overlooked sending you the balance sheet and statement, copy of which you will find enclosed. Hope this has not seriously inconvenienced you.

Mrs. Powell and I left town in rather a hurry going to Kansas, thinking that we would return and look you up before coming East. Will see you the next time I am down.

Best regards.

Yours very truly,

CFP:VV Encl. C. F. POWELL.

Defendants' Exhibit 26.

Tulsa, Oklahoma, May 19th, 1923.

The Liberty National Bank,
Tulsa, Oklahoma.

Gentlemen: Referring to financial statements which you request, wish to advise that I believe I am worth over and above all indebtedness the sum of $150,000.00.

I will make up a financial statement to be used for your files within the next few days and forward same to you.

Yours truly,

C. F. POWELL.

Defendants' Exhibit 27.

Balance Sheet of C. F. Powell as of March 31, 1923.

Assets

Cash:		
Empire Trust, New York City	$2,997.47	
Liberty National, Tulsa, Okla.	9,518.95	
Hornblower and Weeks, New York City	5,428.40	
Petty cash	86.72	
		$ 18,031.54

Accounts Receivable:		
Clients' Fees	112,569.99	
Clients' Expenses	2,611.67	
Employees' Advances	617.86	
		115,799.52
Notes Receivable		375.00
Los Angeles Office Advances		2,100.00
Investments:		
Bonds:		
Market Street Railway 6's Par value $3,000.00	2,819.87	
Capital Stock, Common:		
Household Products Co. 125 shares	4,250.00	
Capital Stock, Preferred:		
American Cotton Fabrics Co. 35 shares	3,434.00	
		10,604.87
Office Furniture and Fixtures		1,851.59
Automobile		2,216.00
Household Furnishings		2,400.00
Oil Properties		2,039.15
Good Will		100,000.00
Total		$255,417.67

Liabilities

Accounts Payable, Employees		1,987.92
Reserve for Depreciation of Furniture & Fixtures		171.65
Net Worth:		
Contributed	27,673.89	
Earned	125,584.21	
By Capitalization of Good Will	100,000.00	
		243,258.10
Total		$255,417.67

C. F. Powell,
441 Kennedy Bldg.,
Tulsa, Okla.

Accounts Receivable

Name	Amount
Landslide Oil Company	$ 800.00
Mound Oil Company	2,500.00
National Refining Company	5,000.00
Midland Refining Company	6,000.00

Name	Amount
Tidewater Oil Company	10,000.00
Morton Brothers	159.99
A. B. Bement	1,000.00
Steller Petroleum Company	680.00
H. V. Foster	6,000.00
Carnahan Drilling Co.	637.50
Johnston Drilling Co.	1,137.50
El Dorado Natural Gas Co.	1,125.00
Sun Company	4,000.00
Stateland Oil Company	100.00
Pierce Junction Oil Co.	250.00
Texas Exploration Co.	500.00
Independent Oil & Gas Co.	3,400.00
National Refining Co.	7,500.00
Eastern Lead & Zinc Co.	250.00
Sian Oil Company	3,000.00
Rogers Bement Commercial	3,500.00
Independent Commercial	3,800.00
D. Replogle	1,000.00
Yount-Lee 1922	3,500.00
Thomas Chestnut, Personal	500.00
George Beggs	750.00
Roby Somers Coal Company	8,500.00
U. S. Supply Company	500.00
D. K. Reamy Estate	300.00
C. S. Stoker Estate	865.00
Mrs. J. J. Deaner	3,000.00
Pulaski Oil Company	3,500.00
Theta Oil Company, 1922	3,000.00
Ambrose Merchant	500.00
Elm Oil Company	1,000.00
Tidewater Amortization	750.00
Denman Brothers	10,000.00
Independent-Miller & Co.	10,000.00
G. R. Ridgeway	1,000.00
Lucado Oil Company	65.00
McMahon No. 2	2,500.00
Total	$112,569.99

C. F. POWELL.

Defendants' Exhibit 28.

Defendants' Exhibit No. 29.

Agreement.

This Agreement, made and entered into this 5th day of November, 1923, by and between The Liberty National Bank, a national banking corporation, of Tulsa, Oklahoma, hereinafter referred to as party of the first part, and the Security National Bank, a national banking corporation, of Tulsa, Oklahoma, hereinafter referred to as party of the second part:

Witnesseth: That for one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and the mutual covenants and agreements herein set forth,

1st. Party of the first part hereby sells, assigns, sets over, delivers and conveys unto party of the second part the following assets:

Commerce Trust Co.	$165,124.93	
Mechanics & Metals Nat. Bk., New York	9,719.35	
First Nat., St. Louis	580.67	
Federal Reserve Bank, Kansas City	127,451.54	
Exchange Nat. Bank, Tulsa	969.46	
Liberty Central Trust Co., St. Louis	26,691.88	
First Nat. Bank, Skiatook, Okla.	171.08	
Cash	62,539.56	
Cash and Sight Exchange		$393,248.47
Loans and Discounts		2,193,625.50
Warrants		4,208.69
U. S. Bonds		25,000.00
Liberty Bonds		193,750.00
Real Estate Owned		41,222.89
Certificates of Indebtedness of U. S.		45,000.00
Stocks and Bonds		8,330.00
Furniture and Fixtures		35,000.00
Five Per Cent Redemption Fund		1,250.00
Federal Reserve Bank Stock		10,500.00
Overdrafts		9,452.44
Revenue Stamps		245.32
Total		$2,960,833.31

and agrees to execute immediately such instruments as may be necessary to effectuate the purposes of this contract.

2nd. Party of the second part assumes and agrees to pay the following items, the same being liabilities of party of the first part:

Circulation			25,000.00
Rediscounts with Federal Reserve Bank			251,488.71
Bills Payable with Federal Reserve Bank			95,000.00
Rediscounts with Mechanics & Met. Nat. Bk, N. Y.			28,537.58
Rediscounts with Com. Trust Co., Kansas City			103,413.22
Deposits: Individual		$1,790,598.38	
Certificates of Dep.		288,119.19	
Cashier's Checks		24,021.06	
Certified Checks		342.00	
Collinsville Nat. Bank		181.29	2,103,261.92
Total			$2,606,701.43

The assets in excess of liabilities stated hereunder are for the purpose of indemnifying party of the second part against any loss it may sustain of any kind or nature in the transfer referred to herein, said surplus amounting to $354,-131.88 (three hundred fifty-four thousand one hundred thirty-one dollars and eighty-eight cents) and divided as follows:

Capital Stock	$250,000.00
Surplus	100,000.00
Undivided Profits	4,131.88
Total	$354,131.88

Party of the first part further transfers, sets over, sells and assigns to party of the second part all other assets of every kind and nature, including choses in action, rights of action, and lease on its banking room.

It is further agreed that party of the second part shall have the right and privilege of renewing any of the notes taken over from party of the first part, and shall further have the right to compromise the notes and obligations of every kind, and the further right to compound, substitute and extend said notes and other obligations during a period of twelve months from this date, at which time a settlement shall be made by party of the second part with party of the first part, and party of the second part shall at that time deliver to party of the first part cash or assets taken over from party of the first part to the amount of $350,000.00 (three hundred fifty thousand dollars) in money and notes to be selected by party of the second part, less any loss sustained or determined by party of the second part during said period of time mentioned.

It is further agreed by and between parties to this contract that current accounts payable and taxes shall be paid

by party of the second part, who may charge the same against the surplus mentioned herein.

It is further understood and agreed that party of the second part assumes no liability to any of the shareholders of party of the first part due to ownership of such shares as they may hold.

Party of the first part warrants that the figures set forth herein and taken from its books to be true and correct.

Party of the first part agrees to immediately call a meeting of its shareholders to put into effect a voluntary liquidation of its assets.

It is further understood and agreed that the terms of this contract shall be binding upon the parties hereto, their successors, assigns, or liquidating agents.

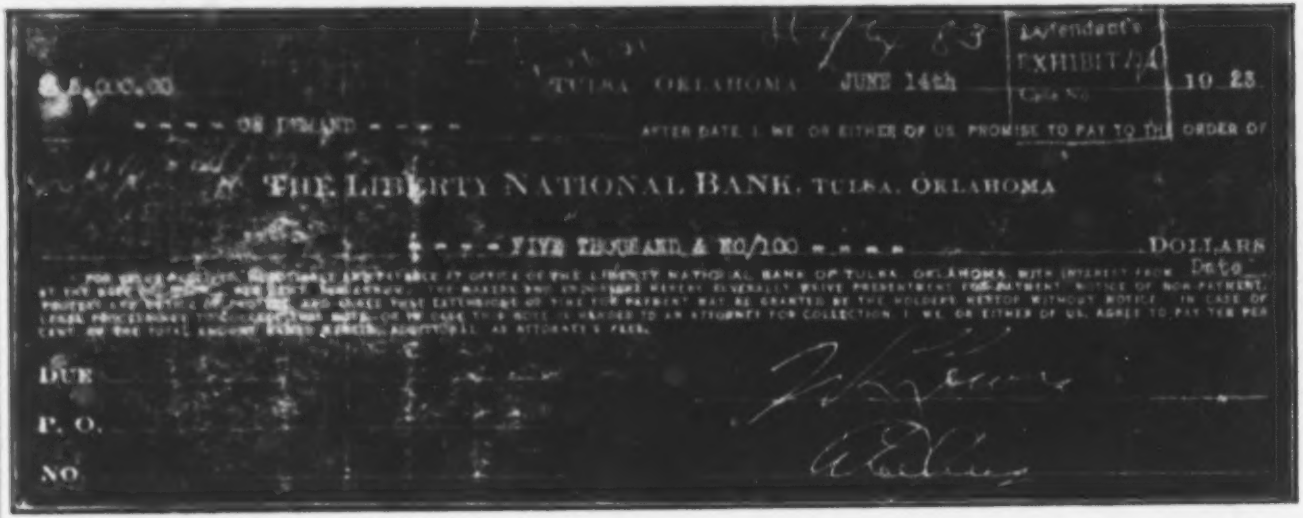
In witness whereof, the parties hereto have set their hands and seals the day and year last above written.

Attest: LIBERTY NATIONAL BANK,
R. C. Lamprich, Cashier. By A. E. Lewis, President,
Party of the First Part.

Attest: SECURITY NATIONAL BANK,
D. H. Pratt, Cashier. By Asa E. Ramsey, President,
Party of the Second Part.

(Endorsed:) Agreement. The Liberty National Bank, Party of the First Part; Security National Bank, Party of the Second Part.

Defendants' Exhibit 30.



Defendants' Exhibit #31.

117465.

State of Oklahoma,
County of Creek.

This instrument was filed for record on Nov. 9, 1923, 8 o'clock a.m., and duly recorded in Book 278 at page 624. C. K. Maddox, County Clerk.

Mortgage of Oil and Gas Lease.

This agreement made and entered into on this 22nd day of August, 1923, by and between A. E. Lewis of Tulsa, Oklahoma, party of the first part, and The Liberty National Bank, a banking corporation of Tulsa, Oklahoma, party of the second part:

Witnesseth

That whereas, the party of the first part is the owner of seven-sixteenths (7/16) working interest in a valid oil and gas mining lease described as follows:

The West Half (W2) of the Southwest Quarter (SW4) of the Northwest Quarter (NW4) of Section Twenty-seven (27) Township Sixteen (16) North, Range Nine (9) East, containing twenty (20) acres, more or less, Creek County, Oklahoma.

And whereas, the party of the first part is the owner of one-half (1/2) working interest in a valid oil and gas mining lease described as follows:

The Northwest Quarter (NW4) of the Northwest Quarter (NW4) and the West Half (W2) of the Northeast Quarter (NE4) of the Northwest Quarter (NW4) of Section Thirty-four (34), Township Sixteen (16) North, Range Nine (9) East, Creek County, Oklahoma containing sixty (60) acres, more or less.

And whereas, the party of the first part is the owner of an undivided one-half (1/2) interest in a valid oil and gas mining lease described as follows:

The East Half (E2) of the Northeast Quarter (NE4) of Section Thirty-three (33), Township Sixteen (16) North, Range Eight (8) East, containing eighty (80) acres, more or less, Creek County, Oklahoma.

This mortgage is given to secure the principal sum of one hundred one thousand & no/100 ($101,000.00) dollars, according to the terms of three certain promissory notes described as follows, to-wit:

One note in the principal sum of $34,000.00, dated

July 16, 1923, due on demand, bearing interest at the rate of six per cent from date, signed by A. E. Lewis.

One note in the principal sum of $34,000.00, dated July 16, 1923, due on demand, bearing interest at the rate of six per cent from date, signed by W. L. Lewis.

One note in the principal sum of $33,000.00 dated May 24, 1923, due on demand, bearing interest at the rate of six per cent from date, signed by The Mingo Company, by R. C. Lamprich, secretary-treasurer.

Now, therefore, as security for the payment of the three above described notes, the party of the first part by these presents mortgage and convey unto the second party, its successors and assigns, his said interest in the aforesaid oil and gas mining leases and his said interest in all of the oil and gas wells thereon and in the machinery, pipes, derricks, tubing and all other oil well supplies or machinery located on or used in connection therewith in which the first party might be interested.

The condition of this agreement is as follows, the first party hereby covenants and agrees that he will pay said notes at maturity with interest thereon when due, that he will not sell, mortgage, assign or otherwise dispose of the property above described and will not permit the same to become subject to any liens until this mortgage is fully satisfied and will not remove any of the said property out of the aforesaid county while this mortgage remains a valid lien thereon.

The parties hereto mutually understand and the first party covenants and agrees that in the event the first party violates or fails to perform any of the above conditions, then the second party herein shall be and it is hereby authorized at its option to declare all of said indebtedness due and payable and to take any one of the following methods to enforce the lien, including therein all costs, expenses and reasonable attorneys' fees incurred in the satisfaction of said debt; second party may take possession of said lands and all property hereinbefore described and maintain, operate and control the said property, and apply all proceeds derived therefrom on the payment of said notes, until the obligations herein are fully paid; first party agrees to give second party immediate possession, or the second party may take possession of and sell all of said property and interests herein described under the laws of the State of Oklahoma, applicable to the foreclosure of mortgage, or second party, at its option is hereby authorized to apply for and have appointed a receiver of all the property and interests above described.

All the terms, conditions and covenants herein contained shall extend to and bind all parties hereto, their heirs, successors and assigns.

In testimony whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

A. E. LEWIS,
Party of the first part.

State of Oklahoma,
County of Tulsa—ss.

Before me the undersigned, a notary public, in and for said county and state, on this 22nd day of August, 1923, personally appeared A. E. Lewis, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. Bertha Taylor, Notary Public. (Seal) My commission expires April 6, 1927.

Indorsement: Compared. Indexed. 117465. Mortgage of Oil and Gas Royalties and Leases. A. E. Lewis to The Liberty National Bank, Tulsa, Oklahoma. Nov. 9, 1923, 8 o'clock a.m., and duly recorded in Book 278 at page 624. C. R. Maddox. Return to Security Nat'l. Bank, Tulsa, Okla. State of Oklahoma, County of Creek.

Defendants' Exhibit #32.

Mortgage of Oil and Gas Leases.

This agreement made and entered into on this 20th day of September, 1923, by and between The Lincoln Company, a corporation, of Tulsa, Oklahoma, party of the first part and The Liberty National Bank, a banking corporation of Tulsa, Oklahoma, party of the second part:

Witnesseth

That whereas, the party of the first part is the owner of an undivided thirteen-forty-eighths (13/48) interest in and to the oil and gas mining lease described as follows:

E2 SE4 and SW4 of the SE4 of Section 17, Township 18 North, Range 13 East, Tulsa County, Oklahoma.

Now, therefore, as security for the payment of four promissory notes described below, the party of the first part does by these presents mortgage and convey unto the second party its successors and assigns, all its interest in the aforesaid oil and gas mining lease and all its interest in all of the oil or

gas wells thereon and in the machinery, pipes, derricks, and all other oil well supplies or machinery located on or used in connection therewith in which the first party might be interested said notes described as follows:

One note in the principal sum of $20,000.00, dated August 27, 1923, due 90 days from date, bearing interest from date at the rate of 6% signed by The Lincoln Company.

One note in the principal sum of $2,000.00, dated September 10, 1923, due 90 days from date, bearing interest from date at the rate of 6% signed by The Lincoln Company.

One note in the principal sum of $7,500.00, dated September 15, 1923, due 90 days from date, bearing interest from date at the rate of 6% signed by The Lincoln Company.

One note in the principal sum of $3,300.00, dated September 20, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company.

As further security for the payment of said notes, first party hereby sells and assigns to second party all its shares of the oil, gas or casinghead gas produced and saved from said premises during the life of this mortgage, hereby agreeing to execute all papers and instruments required to pass the title thereto to the party of the second part, the proceeds of which are to be collected by second party and applied as payment on the notes above mentioned until the same are paid in full. It is understood and agreed that the proceeds of all rentals, royalties, oil, and gas will be delivered to the party of the second part to become effective October 16, 7:00 A. M. 1923.

The condition of this agreement is as follows, the first party hereby covenants and agrees that it will pay said notes at maturity with interest thereon when due, and it will not sell, mortgage, assign or otherwise dispose of the property above described and will not permit the same to become subject to any liens until this mortgage is fully satisfied and will not remove any of the said property out of the aforesaid county while this mortgage remains a valid lien thereon.

The parties hereto mutually understand and the first party covenants and agrees that in the event the first party violates or fails to perform any of the above conditions, then the second party herein shall be and it is hereby authorized at its option to declare all of said indebtedness due and pay-

able and to take any one of the following methods to enforce the lien, including therein all costs, expenses and reasonable attorneys' fees incurred in the satisfaction of said debt; second party may take possession of said lands and all property hereinbefore described and maintain, operate and control the said property, and apply all proceeds derived therefrom on the payment of said note, until the obligations herein are fully paid; first party agrees to give second party immediate possession, or the second party may take possession of and sell all of said property and interests herein described under the laws of the State of Oklahoma, applicable to the foreclosure of mortgage, or second party, at its option is hereby authorized to apply for and have appointed a receiver of all the property and interest above described.

Treasurer's Indorsement.

I hereby certify that I received $6.56 and issued receipt No. 12332 therefor in payment of mortgage tax on the within mortgage. Dated this 7th day of Nov. 1923. W. W. Stuckey, County Treasurer, S. B. Deputy.

All terms, conditions and covenants herein contained shall extend to and bind all parties hereto, their heirs, successors and assigns.

In testimony whereof the party of the first part has hereunto set its hand and seal the day and year first above written.

THE LINCOLN COMPANY,
INCORPORATED,
By A. E. LEWIS, President.

Attest:

R. C. LAMPRINA, Secy-Treas.

State of Oklahoma,
County of Tulsa—ss.

Before me, the undersigned, a notary public in and for said County and State, on this 20th day of September, 1923, personally appeared A. E. Lewis, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal this day and year last above written, Wm. O. Moylan, Notary Public. My commission expires Mar. 30, 1927. (Seal.)

Indorsement, Compared 213899, Mortgage of oil and gas lease The Lincoln Company, Incorporated to The Liberty National Bank, Tulsa, Oklahoma. State of Oklahoma, County of Tulsa. I hereby certify that this instrument was filed for record in my office at 11:33 A. M. Nov. 7, 1923, and duly recorded in Record 480, page 192. O. G. Weaver, County Clerk. Brady Brown, Deputy. (Seal.) Security National Bank, Tulsa, Okla.

Defendants' Exhibit #33.

Mortgage of Oil and Gas Leases.

This agreement made and entered into on this 20th day of September, 1923, by and between The Lincoln Company, a corporation of Tulsa, Oklahoma, party of the first part and The Liberty National Bank, a banking corporation of Tulsa, Oklahoma, party of the second part;

Witnesseth.

That whereas, the party of the first part is the owner of an oil and gas lease described as follows:

The Northeast Quarter (NE 4) of Section 8, Township 21 North, Range 2 West, containing 160 acres more or less, Noble County, Oklahoma.

Now, therefore, as security for the payment of four promissory notes described below, the party of the first part does by these presents mortgage and convey unto the second party its successors and assigns, all its interest in the aforesaid oil and gas mining lease and all its interest in all of the oil or gas wells thereon and in the machinery, pipes, derricks, tubing and all other oil wells supplies or machinery located on or used in connection therewith in which the first party might be interested, said notes described as follows:

One note in the principal sum of $20,000.00, dated August 27, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company.

One note in the principal sum of $2,000.00, dated September 10, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company.

One note in the principal sum of $7,500.00, dated September 15, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company.

One note in the principal sum of $3,300.00, dated September 20, 1923, due 90 days from date, bearing interest from date, at the rate of 6%, signed by The Lincoln Company.

As further security for the payment of said notes, first party hereby sells and assigns to second party all its share of oil gas or casinghead gas produced and saved from said premises during the life of this mortgage, hereby agreeing to execute all papers and instruments required to pass the title thereto, to the party of the second part, the proceeds of which are to be collected by second party and applied as payment on the notes above mentioned until the same are paid in full.

The condition of this agreement is as follows, the first party hereby covenants and agrees that it will pay said notes at maturity with interest thereon when due, and it will not sell, mortgage, assign or otherwise dispose of the property above described and will not permit the same to become subject to any liens until this mortgage is fully satisfied and will not remove any of the said property out of the aforesaid county while this mortgage remains a valid lien thereon.

The parties hereto mutually understand and the first party covenants and agrees that in the event the first party violates or fails to perform any of the above conditions, then the second party herein shall be and it is hereby authorized at its option to declare all of said indebtedness due and payable and to take any one of the following methods to enforce the lien, including therein all costs, expenses and reasonable attorneys' fees incurred in the satisfaction of said debt; second party may take possession of said lands and all property hereinbefore described and maintain, operate and control the said property, and apply all proceeds derived therefrom on the payment of said note, until the obligations herein are fully paid; first party agrees to give second party immediate possession, or the second party may take possession of and sell all of said property and interests herein described under the laws of the State of Oklahoma, applicable to the foreclosure of mortgage, or second party, at its option, is hereby authorized to apply for and have appointed a receiver of all the property and interest above described.

All the terms, conditions and covenants herein contained shall extend to and bind all parties hereto, their heirs, successors and assigns.

In testimony whereof the party of the first part has here-

unto set its hand and seal the day and year first above written.

THE LINCOLN COMPANY,
INCORPORATED,
By A. E. LEWIS, President.

Attest:
R C LAMPRICH, (Seal)
Secretary-Treasurer.

State of Oklahoma,
County of Tulsa—ss.

Before me the undersigned, a notary public, in and for said county and state, on this 20th day of September, 1923, personally appeared A. E. Lewis, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal this the day and year last above written. Wm. O. Moylan, Notary Public. (Seal) My commission expires Mar. 30, 1927.

Indorsement. Mortgage of Oil and Gas Lease, The Lincoln Company, Inc., to the Liberty National Bank, Tulsa, Okla. State of Oklahoma, Noble County, ss. This instrument was filed for record on the 13th day of November, 1923, at 10 o'clock 45 min. duly recorded in Vol. Misel. 22 at page 477, Form ..... M. B. Shultz, County Clerk, By A. G. Keim, Deputy. Security National Bank, Tulsa, Oklahoma.

Defendants' Exhibit #34.

Book 246, page 484, C. K. Maddox, County Clerk.

(117464)

Mortgage of Oil and Gas Leases.

This agreement made and entered into on this 20th day of September, 1923, by and between The Lincoln Company, a corporation of Tulsa, Oklahoma, party of the first part and The Liberty National Bank, a banking corporation of Tulsa, Oklahoma, party of the second part;

Witnesseth.

That whereas, the party of the first part is the owner of an undivided two-thirds interest in and to the oil and gas mining lease described as follows:

The SW4 of the NW4 of Section 21, Township 18 North, Range 11 East, Creek County, Oklahoma.

And whereas, party of the first part is the owner of an undivided one-half interest in and to the oil and gas mining lease described as follows:

The E2 of the NE4 of Section 33, Township 16 North, Range 8 East, Creek County, Oklahoma,

And whereas, party of the first part is the owner of an undivided fifteen-sixteenths (15/16) interest in and to the oil and gas mining lease described as follows:

The E2 of W2 of W2 of NE4 of NW4 the E2 of W2 of NE4 of NW4; the E2 of NE4 of NW4; the W2 of W2 of W2 of NW4 of NE4 being forty acres more or less, all in section 15, Township 16 North, Range 9 East of the Indian Base and Meridian, Creek County, Oklahoma.

Now, therefore, as security for the payment of four promissory notes described below, the party of the first part does by these presents mortgage and convey unto the second party its successors and assigns, all its interest in the aforesaid oil and gas mining leases and all its interest in all of the oil or gas wells thereon and in the machinery, pipes, derricks, tubing and all other oil well supplies or machinery located on or used in connection therewith in which the first party might be interested, said notes described as follows:

One note in the principal sum of $20,000.00 dated August 27, 1923, due 90 days from date bearing interest from date at the rate of 6% signed by The Lincoln Company.

One note in the principal sum of $2,000.00 dated September 10, 1923, due 90 days from date, bearing interest from date at the rate of 6% signed by The Lincoln company.

One note in the principal sum of $7,500.00 dated September 15, 1923, due 90 days from date bearing interest from date at the rate of 6% signed by The Lincoln Company.

One note in the principal sum of $3,300.00 dated September 20, 1923, due 90 days from date bearing interest from date at the rate of 6% signed by the Lincoln Company.

As further security for the payment of said notes, first party hereby sells and assigns to second party all its share of the oil, gas or casinghead gas produced and saved from said premises during the life of this mortgage, hereby agree-

ing to execute all papers and instruments required to pass the title thereto to the party of the second part, the proceeds of which are to be collected by second party and applied as payment on the note above mentioned until the same is paid in full.

It is understood and agreed that the proceeds of all rentals, royalties, oil, and gas will be delivered to the party of the second part to become effective October 16, 7:00 A. M., 1923.

The condition of this agreement is as follows, the first party hereby covenants and agrees that it will pay said notes at maturity with interest thereon when due, that it will not sell, mortgage, assign or otherwise dispose of the property above described and will not permit the same to become subject to any liens until this mortgage is fully satisfied and will not remove any of the said property out of the aforesaid county while this mortgage remains a valid lien thereon.

The parties hereto mutually understand and the first party covenants and agrees that in the event the first party violates or fails to perform any of the above conditions, then the second party herein shall be and it is hereby authorized at its option to declare all of said indebtedness due and payable and to take any one of the following methods to enforce the lien, including therein all costs, expenses and reasonable attorneys' fees incurred in the satisfaction of said debt; second party may take possession of said lands and all property hereinbefore described and maintain, operate and control the said property, and apply all proceeds derived therefrom on the payment of said note, until the obligations herein are fully paid; first party agrees to give second party immediate possession, or the second party may take possession of and sell all of said property and interests herein described under the laws of the State of Oklahoma, applicable to the foreclosure of mortgage, or second party, at its option is hereby authorized to apply for and have appointed a receiver of all the property and interest above described.

All the terms, conditions and covenants herein contained shall extend to and bind all parties hereto, their heirs, successors and assigns.

In testimony whereof the party of the first part has hereunto set its hand and seal the day and year first above written.

THE LINCOLN COMPANY,
INCORPORATED,

(Seal) By A. E. LEWIS, President.

Attest:
R. C. LAMPRICH, Secy-Treas.

State of Oklahoma,
County of Tulsa—ss.

Before me the undersigned, a Notary Public, in and for said County and State, on this 20th day of September, 1923, personally appeared A. E. Lewis, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal this the day and year last above written. Wm. O. Moylan, Notary Public. My commission expires Mar. 30, 1927. (Seal)

Indorsement: Compared 117464, Mortgage of Oil and Gas Leases The Lincoln Company, Inc., to The Liberty National Bank, Tulsa, Oklahoma. State of Oklahoma, County of Creek. This instrument was filed in my office for record Nov. 9, 1923, 8 o'clock A. M. and duly recorded in Book 246 at page 484. C. K. Maddox, County Clerk. Return to Security National Bank, Tulsa, Oklahoma.

Defendants' Exhibit #35.

Form 4—Burkhart Printing & Stationery Co., Tulsa, Okla.

Real Estate Mortgage.

Know all men by these presents: That The Lincoln Company, a corporation of Tulsa, Tulsa County, Oklahoma, party of the first part has mortgaged and hereby mortgage to The Liberty National Bank of Tulsa, Oklahoma, party of the second part, the following described real estate and premises situated in Wagoner County, State of Oklahoma, to-wit:

> An undivided one-fourth (1/4) interest in and to the SE4 of NW4 and South 40 acres of Lot 3, otherwise known as the south 40 acres of NE4 of NW4; all in Section 5, Township 16 North, Range 15 East of Indian Base and Meridian,

with all improvements thereon and appurtenances thereto belonging and warrant the title to the same.

This mortgage is given to secure the principal sum of Thirty-two Thousand Eight Hundred ($32,800.00) and No/100

dollars, with interest thereon at the rate of six per cent per annum payable annually from date according to the terms of four certain promissory notes described as follows to-wit:

One note in the principal sum of $20,000.00, dated Aug. 27, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company, Inc., by R. C. Lamprich, Secy-Treas.

One note in the principal sum of $2,000.00, dated Sept. 10, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company, Inc., by R. C. Lamprich, Secy-Treas.

One note in the principal sum of $7,500.00, dated Sept. 15, 1923, due 90 days from date, bearing interest at the rate of 6% from date, signed by The Lincoln Company, Inc., by R. C. Lamprich, Secy-Treas.

One note in the principal sum of $3,300.00 dated Sept. 20, 1923, due 90 days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company, Inc., by R. C. Lamprich, Secy-Treas.

Provided always, that this instrument is made, executed and delivered upon the following conditions, to-wit: That said first party hereby covenants and agrees to pay all taxes and assessments of said land when the same shall become due and to keep all improvements in good repair and not to commit or allow waste to be committed on the premises, and to insure, and keep insured in favor of second party, buildings on said premises.

It is further expressly agreed, by and between the parties hereto that if any default be made in the payment of the principal sum of this mortgage, or any interest installment, or the taxes, insurance premiums, or in case of the breach of any covenant herein contained, the whole of said principal sum, with interest, shall be due and payable, and this mortgage may be foreclosed and said party shall be entitled to the immediate possession of the premises and all rents and profits thereof.

Said party of the first part hereby agrees that in the event action is brought to foreclosure this mortgage it will pay a reasonable attorneys' fee of ten per cent of principal sum of notes, which this mortgage also secures.

Party of the first part, for said consideration, does hereby expressly waive appraisement of said real estate and all benefits of the homestead, exemption and stay laws in Oklahoma.

Dated this 20th day of September, 1923.

THE LINCOLN COMPANY. INC., (Seal)

By A. E. LEWIS, President. (Seal)

Attest:

R. C. LAMPRICH, Secretary-Treasurer.

Corporation Acknowledgment.

State of Oklahoma,
County of Tulsa—ss.

Before me, Wm. O. Moylan, a Notary Public, in and for said county and state on this 20th day of September, 1923, personally appeared A. E. Lewis, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal this the day and year last above written. Wm. O. Moylan, Notary Public. (Seal) My commission expires Mar. 30, 1927.

I hereby certify that I received $6.60 and issued receipt #6348 therefor in payment of mortgage tax on the within mortgage dated this 16th day of Nov., 1923. E. L. Riley, County Treasurer. Alice Thompson.

11613.

Real Estate Mortgage from The Lincoln Company to The Liberty National Bank. State of Oklahoma, County of ss. This instrument was filed for record on the ... day of ..., 192.., at .... o'clock .. M., and duly recorded in book ..... page .... of the records of this office.

State of Oklahoma, Wagoner County, ss. I hereby certify that this instrument was filed for record in my office on Nov. 15, 1923 at 8 o'clock A. M. and is truly recorded 170 page 232. J. C. Campbell, County Clerk, by S. E. Smith, Deputy Clerk. Return to Security National Bank, Tulsa, Okla.

Burkhart Printing & Stationery Co. Tulsa.

Defendants' Exhibit #36.

Form 4—Burkhart Printing & Stationery Co., Tulsa, Okla.

Real Estate Mortgage.

Know all men by these presents: That The Lincoln Company, a corporation of Tulsa, Tulsa County, Oklahoma, party of the first part, have mortgaged and hereby mortgage to The Liberty National Bank of Tulsa, Okla., party of the second part, the following described real estate and premises situated in Washington County, State of Oklahoma, to-wit:

The Southwest Quarter (SW4) of Southwest Quarter (SW4) and Southwest Quarter (SW4) of Northwest Quarter (NW4) of Southwest Quarter (SW4) of Section Thirty-four (34), Township Twenty-four (24) North, Range Thirteen (13) East, containing fifty (50) acres more or less.

with all improvements thereon and appurtenances thereto belonging and warrant the title to the same.

This mortgage is given to secure the principal sum of thirty-two thousand eight hundred & No 100 ($32,800.00) dollars with interest thereon at the rate of six per cent per annum, payable annually from date according to the terms of four certain promissory notes described as follows, to-wit:

One note in the principal sum of $29,000.00, dated Aug. 27, 1923, due ninety days from date, bearing interest from date at the rate of 6%, signed by The Lincoln Company, Inc.

One note in the principal sum of $2,000.00, dated Sept. 10, 1923, due ninety days from date, bearing interest from date at the rate of 6% signed by The Lincoln Company, Inc.

One note in the principal sum of $7,500.00, dated September 15, 1923 due ninety days from date, bearing interest at the rate of 6% from date, signed The Lincoln Company, Inc.

One note in the principal sum of $3,300.00, dated Sept. 30, 1923, due ninety days from date, bearing interest from date at the rate of 5% signed by The Lincoln Company, Inc.

Provided always, that this instrument is made, executed and delivered upon the following conditions, to-wit:

That said first party hereby covenants and agrees to pay all taxes and assessments of said land when the same shall become due and to keep all improvements in good repair

and not to commit or allow waste to be committed on the premises, and to insure and keep insured in favor of second party, buildings on said premises.

It is further expressly agreed, by and between the parties hereto that if any default be made in the payment of the principal sum of this mortgage, or any interest installment, or the taxes insurance premiums, or in case of the breach of any covenant herein contained, the whole of said principal sum with interest shall be due and payable, and this mortgage may be foreclosed and second party shall be entitled to the immediate possession of the premises and all rents and profits thereof.

Said party of the first part hereby agrees that in the event action is brought to foreclose this mortgage it will pay a reasonable attorney's fee of ten per cent of principal sum of notes, which this mortgage also secures.

Party of the first part, for said consideration, does hereby expressly waive appraisement of said real estate and all benefits of the homestead, exemption and stay laws in Oklahoma.

Dated this 20th day of Sept, 1923.

(Seal) THE LINCOLN COMPANY INC.
By A. E. LEWIS, President. (Seal)

Attest:

R. C. LAMPRICH Secretary-Treasurer.

I hereby certify that I received $6.60 and issued receipt No. 8499 therefor in payment of mortgage tax on the within mortgage dated this 9th day of Nov., 1923. F. C. Reed, County Treasurer, Washington County, S. A.

Corporation Form Acknowledgment.

State of Oklahoma,
County of Tulsa—ss.

Before me, the undersigned, a Notary Public, in and for said County and State, on this 20th day of September, 1923, personally appeared A. E. Lewis to me known to be the identical person who subscribed the name of the maker thereof to the within and foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. Wm. O. Moylan, Notary Public. My commission expires Mar. 30, 1927. (Seal)

93667.

Real Estate Mortgage from The Lincoln Company to The Liberty National Bank. State of Oklahoma, County of Washington, ss. This instrument was filed for record on this 9th day of November, 1923, at 8 o'clock A. M. and duly recorded in Book 38 Mtg, page 506 of the records of this office. Neva M. Scott, County Clerk. By Grace M. Lopp, Deputy Clerk. Return to Security National Bank, Tulsa, Oklahoma.

Burkhart Printing & Stationery Company, Tulsa.

Defendants' Exhibit #37.

Form 4—Burkhart Printing & Stationery Co., Tulsa, Okla.

Real Estate Mortgage.

Know all men by these presents, that, Mingo Company, Inc., of Tulsa County, Oklahoma, party of the first part, has mortgaged and hereby mortgages to Security National Bank of Tulsa, Oklahoma, party of the second part, the following described real estate and premises situated in Tulsa County, State of Oklahoma, to-wit:

> The Southeast Quarter (SE4) of the Southeast Quarter (SE4) of the Southwest Quarter (SW4) and the Northeast Quarter (NE4) of the Southeast Quarter (SE4) of the Southwest Quarter (SW4) and the West Half (W2) of the Southeast Quarter (SE4) of the Southwest Quarter (SW4) and the East Twenty (20) acres of Lot Four (4) and the West Half (W2) of the Northeast Quarter (NE4) of the Southwest Quarter (SW4) and all of Lot Three (3) and the West Half (W2) of the Southwest Quarter of the Southwest Quarter (SW4) and the East Half (E2) of the Northeast Quarter (NE4) of the Southwest Quarter (SW4) all in Section Nineteen (19), Township Twenty (20) North, Range Fourteen (14) East, all located in Tulsa County, Oklahoma, except five-tenths (5/10) of an acre deeded to Tulsa County, Oklahoma, as recorded in Book of Deeds No. 273, page 385 of the records of the Clerk of Tulsa County, Oklahoma,

with all improvements thereon and appurtenances thereto belonging and warrant the title to the same.

This mortgage is given to secure the principal sum of thirty-three thousand and no/100 dollars with interest thereon at the rate of five per cent per annum, payable annually from June 20, 1923, according to the terms of one certain promissory note described as follows, to-wit:

Dated May 24, 1923, in the principal amount of thirty-three thousand $33,000.00 dollars, due on demand.

Provided, always that this instrument is made, executed and delivered upon the following conditions, to-wit: That said first parties hereby covenant and agree to pay all taxes and assessments of said land when the same shall become due and to keep all improvements in good repair and not to commit or allow waste to be committed on the premises, and to insure, and keep insured in favor of second party, buildings on said premises.

It is further expressly agreed, by and between the parties hereto that if any default be made in the payment of the principal sum of this mortgage, or any interest installment, or the taxes, insurance premiums, or in case of the breach of any covenant herein contained, the whole of said principal sum, with interest, shall be due and payable, and this mortgage may be foreclosed and said second party shall be entitled to the immediate possession of the premises and all rents and profits thereof.

Said parties of the first part hereby agree that in the event action is brought to foreclose this mortgage will pay a reasonable attorney's fee of thirty-three hundred ($3300.00) dollars which this mortgage also secures.

Parties of the first part, for said consideration, do hereby expressly waive appraisement of said real estate and all benefits of the homestead, exemption and stay laws in Oklahoma.

Dated this 13th day of Nov., 1923.

MINGO COMPANY, INC., (Seal)
By W. L. LEWIS, President.

Attest:

R. C. Lamprich, Secretary. (Seal)

Treasurer's Indorsement: I hereby certify that I received $33.00 and issued receipt No. 12392 therefor in payment of mortgage tax on the within mortgage. Dated this 13th day of Nov., 1923. W. W. Stuckey, County Treasurer, S. B., Deputy.

State of Oklahoma,
County of Tulsa—ss.

Before me, a notary public, in and for said county and state, on this 13th day of November, 1923, personally appeared R. C. Lamprich, trustee, to me personally known to

be the identical person who executed the within and foregoing instrument and acknowledged to me, that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my signature and official seal, the day and year last above written. My commission expires ....
Notary Public.

State of Oklahoma,
County of Tulsa—ss.

Before me, the undersigned, a notary public, in and for said county and state, on this 13th day of November, 1923, personally appeared ..... the maker thereof to the within and foregoing instrument as its W. L. Lewis, president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. Lois Greene, Notary Public. (Seal) My commission expires Apr. 3, 1927.

Compared 244372. Real Estate Mortgage from Mingo Company, Inc., to Security National Bank. State of Oklahoma, Tulsa County—ss. This instrument was filed for record on the 13th day of Nov., 1923, at 3 o'clock p.m., and duly recorded in Book 465, page 340 of the records of this office. O. G. Weaver, County Clerk. By Brady Brown, Deputy Clerk. Return to Owen Yancey C Fist 810 Mayo, Tulsa, Ok.

Burkhart Printing & Stationery Co., Tulsa.

Defendants' Exhibit #37.

Form No. 5—Burkhart Printing & Sta. Co., Tulsa, Okla.

General Warranty Deed.
(Oklahoma Statutory Form)

This indenture, made this 12th day of November, A. D., 1923, between A. E. Lewis and Mildred B. Lewis, his wife of Tulsa County, in the State of *Tulsa* party of the first part, and Security National Bank of Tulsa, Oklahoma, party of the second part,

Witnesseth, that in consideration of the sum of eighty seven thousand nine hundred thirty eight and 17/100 dollars, the receipt which is hereby acknowledged, said parties of the first part do, by these presents, grant, bargain, sell and convey unto said party of the second part its successors and assigns all of the following described real estate, situated in the County of Tulsa, State of Oklahoma, to wit:

Lots seven (7) eight (8) and nine (9) and the south 20′ of lot 10 in block 5 Horner Addition to the City of Tulsa, Oklahoma, according to the recorded plat thereof, less the following described part thereof:

Beginning at a point 20′ north of the Southwest corner of lot 9, block 5 of the Horner Addition to the City of Tulsa, Tulsa County, Oklahoma, and running thence North on the West line of lots 9 and 10 a distance of 50 feet, thence in an eastern direction and parallel to the North line of said lot nine a distance of 100 feet; thence South a distance of 31 feet, thence East and parallel to the North line of said lot 9 a distance of 30 feet, thence South and along the West line of alley a distance of 19 feet, thence in a western direction and parallel to the North line of said lot 9, a distance of 130 feet to the point of beginning and beginning at the southwest corner of lot 7, block 5 of the Horner Addition to the City of Tulsa, Tulsa County, Oklahoma, and running thence North and on the West line of said lot 7 a distance of 60 feet; thence in an eastern direction and parallel to the North line of said lot seven, a distance of 85 feet, thence north a distance of 10 feet, thence in an eastern direction and on the north line of said lot seven, a distance of 45 feet to the northeast corner of said lot 7, thence in a southern direction and on the East line of said lot 7, a distance of 70 feet to the southeast corner of said lot 7, thence in a western direction and on the South line of said lot 7 a distance of 130 feet to the point of beginning.

To have and to hold the same, together with all and singular tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining forever.

And said A. E. Lewis and Mildred B. Lewis, his wife, their heirs, executors or administrators do hereby covenant, promise and agree to and with said party of the second part at the delivery of these presents that they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, and discharged and unencumbered of and from all former and other grants, title, charges, estates, judgements, taxes, assessments and encumbrances, of whatever nature and kind, except, general and special taxes for the year 1923, and subsequent years, posses-

sion to be delivered to party of the second part August 1, 1924. ..... and that they will warrant and forever defend the same unto the said party of the second part, its successors and assigns, against said party of the first part, their heirs or assigns and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In witness whereof, the said party of the first part have hereunto set their hand the day and year first above written.

A. E. LEWIS,
MILDRED B. LEWIS.

17075 Stamp 11-13-23. Sixty dollars. Stamp ten dollars. Stamp ten dollars. Stamp five dollars. Stamp three dollars.

State of Oklahoma,
County of Tulsa—ss.

Before me the undersigned a notary public in and for said county and state, on this 13th day of November, 1923, personally appeared A. E. Lewis and Mildred B. Lewis, his wife to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. J. O. Osborn, Notary Public. (Seal) My commission expires June 17, 1925.

Compared 244410. General Warranty Deed from A. E. Lewis to Security National Bank. State of Oklahoma, County of Tulsa—ss. This instrument was filed for record on the 13th day of November, 1923, at 4:50 o'clock p.m., and duly recorded in Book 476, page 361 of the records of this office. O. G. Weaver, Clerk. Brady Brown, Deputy Clerk.

Return to Security National Bk., Tulsa, Oklahoma. (Seal)
Burkhart Ptg. & Stn. Co. Tulsa, Okla.

Defendants' Exhibit #38.

Form No. 5—Burkhart Printing & Sta. Co. Tulsa, Okla.

General Warranty Deed
(Oklahoma Statutory Form)

This indenture, made this 12th day of November, A. D., 1923, between W. L. Lewis and Lina T. Lewis, his wife of Tulsa County, in the State of Oklahoma, party of the first

part, and The Security National Bank of Tulsa, Oklahoma, party of the second part,

Witnesseth, that in consideration of the sum of forty-eight thousand seven hundred ninety-one dollars and 73/100 dollars, the receipt of which is hereby acknowledged, said parties of the first part do, by these presents, grant, bargain, sell and convey unto said party of the second part, its successors and assigns, all of the following described real estate, situated in the County of Tulsa, State of Oklahoma, to-wit:

Beginning at a point on the east line of lot 8, block 8, Sunset Park Addition to the City of Tulsa, Tulsa County, Oklahoma according to the recorded plat thereof, 10.2 feet in a northerly direction from the southeast corner of said lot and running thence in a westerly direction and parallel to the southern line of said lot, a distance of 83 feet; thence at right angles to the south line of said lot and in a northern direction a distance of 34 feet, thence in a western direction and parallel to the south line of said lot a distance of 14 feet; thence in a northern direction and at right angles to the said south line of said lot a distance of 23.5 feet thence in a southwesterly direction a parallel to the north line of said lot eight, a distance of 40 feet thence in a southern direction a distance of 19 feet thence in a southwesterly direction and parallel to the north line of said lot 8, a distance of 38 feet, thence in a northern direction and on the west line of said lot a distance of 33 feet to the northwest corner of said lot; thence in a north easterly direction and on the north line of said lot eight a distance of 190 feet to the northeast corner of said lot eight, thence in a southerly direction and on the east line of said lot a distance of 113.73 feet to the point of beginning, all of said property just described being a part of lot 8, block 8, Sunset Park Addition to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining forever.

And said W. L. Lewis and Lina T. Lewis, his wife, their heirs, executors or administrators do hereby covenant, promise and agree to and with said party of the second part, at the delivery of these presents that they are lawfully seized in their own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that

the same are free, clear, and discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances, of whatever nature and kind, except, general and special taxes for the year 1923, and subsequent years; and a first mortgage held by the Mortgage Bond Company of New York in the amount of ten thousand dollars ($10,000.00), less the amounts paid thereon. Possession to be delivered to party of the second part Aug. 1, 1924.

..... and that they will warrant and forever defend the same unto the said party of the second part, its successors and assigns, against said party of the first part, their heirs or assigns and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In Witness Whereof, the said part.. of the first part have hereunto set their hand the day and year first above written.

W. L. LEWIS.
LINA T. LEWIS.

Stamp 33674 Thirty dollars. Stamp Ten Dollars. Stamp One Dollar.

State of Oklahoma,
County of Tulsa—ss.

Before me the undersigned a notary public in and for said county and state, on this 13th day of November, 1923, personally appeared W. L. Lewis and Lina T. Lewis to me known to be the identical persons who execu'ed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. J. O. Osrorh, Notary Public. (Seal) My commission expires June 19, 1926.

Compared 244411. General Warranty Deed from W. L. Lewis to Security National Bank, City, State of Oklahoma, County of Tulsa,ss. This instrument was filed for record on the 13th day of November, 1923, in Book 476, page 362 of the records of this office. O. G. Weaver, Clerk. Brady Brown, Deputy Clerk. (Seal)

Defendants' Exhibit #39.

Proxy.

Know All Men By These Presents:

That I, Mabel M. Mitchell, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of the Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 2nd day of January, 1922.

MABEL M. MITCHELL.

Witness: Sara B. Mitchell.

Defendants' Exhibit #40.

Proxy.

Know All Men By These Presents:

That I, Sara B. Mitchell, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting, hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 2nd day of January, 1923.

SARA B. MITCHELL,

Witness: Mabel M. Mitchell.

Defendants' Exhibit #41.

Proxy.

Know All Men By These Presents:

That I, C. C. *Simmour*, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting hereby revoking all former proxies by me made and given.

In Testimony Whereof I have hereunto set my hand and seal on this 8th day of Jan., 1923.

C. C. SIMMONS.

Witness: .....

Defendants' Exhibit #42.

Proxy.

Know All Men By These Presents:

That I, Mrs. Chas. Stunkard, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting, hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 4 day of Jan., 1923.

MRS. CHAS. STUNKARD.

Witness: .....

Defendants' Exhibit #43.

Proxy.

Know All Men By These Presents:

That I Nora I. Suppes, the undersigned do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting, hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 9th day of January, 1923.

NORA I SUPPES.

Witness: C. E. G.

Defendants' Exhibit #44.

Proxy.

Know All Men By These Presents:

That I, Charles Stunkard, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of directors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting, hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 4th day of January, 1923.

CHARLES STUNKARD.

Witness: .....

Defendants' Exhibit #45.

Proxy.

Know All Men By These Presents:

That I, J. H. Powers, the undersigned, do hereby constitute and appoint A. E. Lewis my attorney, agent and proxy, with full power to vote as my proxy, for the election of di-

rectors and upon all such other matters that may be considered at the Annual Meeting of the shareholders of The Liberty National Bank, Tulsa, Oklahoma, to be held at its office in the City of Tulsa, Tulsa County, Oklahoma, on the 9th day of January, 1923, at three o'clock p.m., or any adjournment thereof, according to the number of votes I should be entitled to vote if I were personally present at said meeting, hereby revoking all former proxies by me made and given.

In Testimony Whereof, I have hereunto set my hand and seal on this 4th day of January, 1923.

J. H. POWERS.

Witness: R. G. Powers.

Defendants' Exhibit #46.

December the Eighth,
Nineteen Hundred Twenty-two.

Nora I. Suppes,
406 So. Denver,
Tulsa, Okla.

Dear Madam: The annual meeting of the shareholders of the Liberty National Bank of Tulsa Oklahoma, will be held at the office of said bank on Tuesday, January 9, 1923, at 3:00 p.m.

Said meeting is for the purpose of electing new officers and directors for the coming year, and any other business that might come before the meeting.

If you are unable to be present, will you please sign the enclosed proxy.

Yours truly,

Cashier.

RCL'OM

Defendants' Exhibit #47.

December the Eighth,
Nineteen Hundred Twenty-two.

Mr. J. H. Powers,
1707 S. Detroit,
Tulsa, Okla.

Dear Sir: The annual meeting of the shareholders of the Liberty National Bank of Tulsa, Oklahoma, will be held at the office of said bank on Tuesday, January 9, 1923, at 3:00 p.m.

Said meeting is for the purpose of electing new officers and directors for the coming year, and any other business that might come before the meeting.

If you are unable to be present, will you please sign the enclosed proxy?

Yours truly,

RCL: OM Cashier.

The foregoing is all of the evidence offered or introduced on the trial of this case.

At this time, on the 26th day of January, 1926, at the close of all the evidence in the case, the defendant Allie E. Lewis renewed his Motion for a Directed Verdict of Not Guilty on each count of the indictment; and

At the same time, the defendant William Lloyd Lewis renewed his Motion for a Directed Verdict of Not Guilty upon each count of the indictment; and

The court thereupon overruled each of said motions as to each defendant upon each separate count of the indictment; to which rulings of the court the defendants and each of them at the time duly excepted.

The Court: Very well, how long do you want to argue?

Mr. Davidson: If your honor please, we desire to renew our motion for a directed verdict. And I think we ought to have two hours on a side in the argument to the jury.

The Court: Now the issues here are extremely narrow. There is this evidence offered for the purpose of showing intent but any matters that are involved here except as might tend to show intent are very narrow. Your issues here are extremely narrow.

Mr. Davidson: If your honor please, the facts the Government has brought in here to show their intent are very voluminous, and it takes time to go into those things and explain them.

The Court: I have run up against a circumstance. I must leave here tomorrow afternoon at 4:38. I am inclined to give you an hour on a side. I usually don't allow that much time. You will make a much better argument in a half hour than an hour, but I am inclined to give you an hour on the side.

Mr. Davidson: If your honor please, we don't want to delay this case any more than necessary, but it is out of the question to argue this case properly in an hour.

The Court: I don't think so. You will make a better argument in a half hour than you will in an hour.

Mr. Davidson: If your honor please, I have argued these same facts, this will be four times.

The Court: I know, but let's try an hour on a side. I am going to submit the matter to the jury.

Mr. Davidson: Will your honor permit us to submit to your honor a couple of authorities here in the absence of the jury?

The Court: I always let the jury hear everything I hear.

Mr. Davidson: Well, will you permit us to present these two authorities in the presence of the jury?

The Court: Yes.

Mr. Davidson: We want the record to show that we renew our motion for a directed verdict.

The Court: Very well, the record may show that.

(Thereupon Mr. Davidson presented the two authorities referred to, and argued them at length to the court, at the conclusion of which the following proceedings were had and done, to-wit:)

The Court: There is just one point where you and I so far have disagreed as to the law and that is, it is your contention, I am going to give it to you cold and positive, it is your contention that no matter what the minute books show or who put it there, or what statements are made, whether true or false or the intent, if they are not entries made in the books of account of a bank in regard to the figures of the bank, that they are not false entries.

Mr. Davidson: That is on the minute book.

The Court: I cannot agree with you and I am going to charge the jury—you have asked a charge which I am going to deny, and charge them positively the other way, but aside from that, you will have no complaint with the charge of the court at all.

Mr. Davidson: Aside from that contention, your honor, we say the evidence in this case is wholly insufficient to hold either of these defendants with having made any of these false entries and we think on that the court should direct a verdict of not guilty.

The Court: Well, I believe the jury should do their part of the work and my judgment is except in the one instance, and I am going to hold that way, I will overrule the motion at this time and save your exceptions.

Mr. Davidson: We save our exceptions to your honor's ruling

The Court: And I will give you an hour on the side to argue the case.

Mr. Davidson: If your honor please, Mr. Champion will open the argument for us with ten minutes, and I will conclude the argument with the rest of the time.

The Court: All right, proceed with the argument.

(Thereupon the cause was argued to the jury by counsel for the Government and counsel for the defendants.)

Thereupon, in due time, the defendants presented to the court their written requests for instructions, which said requested instructions, with the indorsements made thereon, of the giving or refusal of the same by the judge of said court, and the allowance of exceptions, are in the words and figures as follows, to-wit:

In the United States District Court for the Eastern District of Oklahoma. The United States of America, Plaintiff, vs. Allie E. Lewis, and William Lloyd Lewis, Defendants. No. 9346 Criminal.

Instructions Requested by Defendants.

Come now the defendants, and request the court to give to the jury the following instructions, to-wit:

No. 1. You are instructed to return a verdict of "not guilty" as to the defendant, A. E. Lewis, on Count No. 1 of the indictment.

No. 2. You are instructed to return a verdict of "not guilty" as to the defendant, William Lloyd Lewis, on Count No. 1 of the indictment.

No. 3. You are instructed to return a verdict of "not guilty" as to the defendant, Allie E. Lewis, on Count No. 2 of the indictment.

No. 4. You are instructed to return a verdict of "not guilty" as to the defendant, William Lloyd Lewis, on Count No. 2 of the indictment.

No. 5. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 3 of the indictment.

No. 6. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 3 of the indictment.

No. 7. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 4 of the indictment.

No. 8. You are instructed to return a verdict of "not guilty as to the defendant Allie E. Lewis on Count No. 4 of the indictment.

No. 9. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 5 of of the indictment.

No. 10. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 5 of the indictment.

No. 11. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 6 of the indictment.

No. 12. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 6 of the indictment.

No. 13. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on County No. 7 of the indictment.

No. 14. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 7 of the indictment.

No. 15. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 8 of the indictment.

No. 16. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 8 of the indictment.

No. 17. You are instructed to return a verdict of not guilty as to the defendant Allie E. Lewis on Count No. 9 of the indictment.

No. 18. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 9 of the indictment.

No. 19. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 10, of the indictment.

No. 20. You are instructed to return a verdict of "not

guilty" as to the defendant William Lloyd Lewis on Count No. 10 of the indictment.

No. 21. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 11 of the indictment.

No. 22. You are instructed to return a verdict or "not guilty" as to the defendant William Lloyd Lewis on Count No. 11 of the indictment.

No. 23. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 12 of the indictment.

No. 24. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 12 of the indictment.

No. 25. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 13 of the indictment.

No. 26. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 13 of the indictment.

No. 27. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 14 of the indictment.

No. 28. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 14 of the indictment.

No. 29. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 15 of the indictment.

No. 30. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 15 of the indictment.

No. 31. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 16 of the indictment.

No. 32. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 16 of the indictment.

No. 33. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 17 of the indictment.

No. 34. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 17 of the indictment.

No. 35. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 18 of the indictment.

No. 36. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 18 of the indictment.

No. 37. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 19 of the indictment.

No. 38. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 19 of the indictment.

No. 39. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 20 of the indictment.

No. 40. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 20 of the indictment.

No. 41. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 21 of the indictment.

No. 42. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 21 of the indictment.

No. 43. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 22 of the indictment.

No. 44. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 22 of the indictment.

No. 45. You are instructed to return a verdict of "not guilty as to the defendant Allie E. Lewis on Count No. 23 of the indictment.

No. 46. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 23 of the indictment.

No. 47. You are instructed to return a verdict of "not

guilty" as to the defendant Allie E. Lewis on Count No. 24 of the indictment.

No. 48. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 24 of the indictment.

No. 49. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 25 of the indictment.

No. 50. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 25 of the indictment.

No. 51. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 26 of the indictment.

No. 52. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 26 of the indictment.

No. 53. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 27 of the indictment.

No. 54. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 27 of the indictment.

No. 55. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 28 of the indictment.

No. 56. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 28 of the indictment.

No. 57. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 29 of the indictment.

No. 58. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 29 of the indictment.

No. 59. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 30 of the indictment.

No. 60. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 30 of the indictment.

No. 61. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 31 of the indictment.

No. 62. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 31 of the indictment.

No. 63. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 32 of the indictment.

No. 64. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 32 of the indictment.

No. 65. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 33 of the indictment.

No. 66. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 33 of the indictment.

No. 67. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 34 of the indictment.

No. 68. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 34 of the indictment.

No. 69. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 35 of the indictment.

No. 70. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 35 of the indictment.

No. 71. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 36 of the indictment.

No. 72. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 36 of the indictment.

No. 73. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 37 of the indictment.

No. 74. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 37 of the indictment.

No. 75. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 38 of the indictment.

No. 76. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 38 of the indictment.

No. 77. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 39 of the indictment.

No. 78. You are instructed to return a verdict of "'not guilty" as to the defendant William Lloyd Lewis on Count No. 39 of the indictment.

No. 79. You are instructed to return a verdict of "not guilty" as to the defendant Allie E. Lewis on Count No. 40 of the indictment.

No. 80. You are instructed to return a verdict of "not guilty" as to the defendant William Lloyd Lewis on Count No. 40 of the indictment.

No. 81. You are instructed that before you are authorized to convict the defendants, or either of them, upon any count of the indictment you must be convinced from the evidence beyond a reasonable doubt that the defendant or defendants are guilty of the offense as charged in the indictment.

No. 82. A reasonable doubt as used in these instructions is such a doubt as would leave your minds, after a careful and impartial investigation of all the evidence, so undecided that you are unable to say that you have an abiding conviction of the guilt of the defendant, or defendants, or such a doubt as in the graver and more important transactions of life will cause a reasonable, prudent man to hesitate and pause. It is that state of the case which, after an entire comparison and consideration of all the evidence, including the evidence not only on the part of the government but on the part of the defendants, also, which leaves your mind in that condition that you cannot say you feel an abiding conviction of the truth of the charge; such an abiding conviction as you would be willing to act upon in the most weighty and important matters relating to your own affairs.

No 83. You are instructed that the indictment is not any evidence as to guilt, but it is merely the means by which the issues are formed for the trial to be had before the court and jury, and you must not permit the fact that the defendants have been indicted by a grand jury to raise any presumption

in your minds that they or either of them are guilty of the offense as charged against them.

No. 84. You are instructed that under the law each of the defendants is presumed to be innocent of the crime charged against him in the indictment, and this presumption of innocence continues with them and each of them throughout the trial, until it is overcome by competent evidence which convinces you of their guilt beyond a reasonable doubt; that this presumption of innocence is evidence created by law in favor of each of the accused, whereby the innocence of each of them is established, until the evidence convinces you beyond a reasonable doubt of his or their guilt.

No. 85. Circumstantial evidence is where certain facts or circumstances are proved from which certain inferences flow. It is just as much your duty to convict on circumstantial evidence as it is on direct, or positive evidence, if the circumstantial evidence is sufficiently strong and convincing; but the facts and circumstances must be established beyond a reasonable doubt, and the inferences flowing from said facts and circumstances so established must be certain and positive. And if the circumstantial evidence is as consistent with innocence as it is with guilt, you are not warranted in convicting the defendants or either of them thereon. In other words, the facts and circumstances relied upon to establish guilt must be established by the evidence beyond a reasonable doubt, and when so established, must exclude every reasonable hypothesis of innocence. And unless the circumstantial evidence measures up to this standard, it is your duty to acquit the defendants of the offense charged.

No. 86. You are instructed that in order to constitute the offense of making a false entry in the books of the Liberty National Bank with the intent to injure and defraud the said bank, or other persons, companies or corporations, and to deceive the officers of said bank, the Comptroller of the Currency of the United States, or any agent or examiner appointed under the laws of the United States to examine the affairs of the said banking association, it is necessary for you to believe from the evidence in this case beyond a reasonable doubt that the defendant charged made, or directed the making of, the entry upon which the accusation is based; that the entry was false, and known by the defendant charged to be false at the time of the making thereof; and that the said false entry was made with the intent on the part of the defendant charged to either injure or defraud the Liberty National Bank, or the Comptroller of the Currency, or an agent or examiner ap-

pointed under the laws of the United States to examine the affairs of the said Banking Association.

No. 87. You are instructed that the word "entry", as used in these instructions, means an item of account; and that the phrase "book of the Liberty National Bank" means a book of account of the Liberty National Bank. And unless you find from the evidence in this case beyond a reasonable doubt that the entry charged to have been made was an entry of an item of an account, and was made in a book of account of the Liberty National Bank, you should not convict the defendants, or either of them, but should render a verdict of not guilty.

No. 88. You are instructed that the mere concealment by the defendants or either of them from the person who actually made the entry alleged to be false of the information which would enable the person making said entry to make a correct entry, is not sufficient to sustain a conviction, but that the entry must be made by the party charged, or at his direction.

No. 89. You are instructed that under each count of the indictment an intent on the part of the defendants to injure or defraud the Liberty National Bank or to deceive the other officers of said Bank or the Comptroller of the Currency of the United States, or an agent or examiner appointed under the laws of the United States to examine the affairs of said banking association, is an essential element of the offense charged, and must be proved to your satisfaction beyond a reasonable doubt; that there is a presumption of law that one intends the natural and probable effect of the acts he knowingly and intentionally does, but this presumption may be overcome by evidence, and the defendant's testimony as to his intent and his explanations of his acts and omissions are competent and material subjects upon the question of his or their intent; and it is your duty to consider all of the evidence of the acts and omissions of the defendants, the rebuttable presumption that one intends the natural and probable effect of his acts, intentionally and knowingly done; the testimony of the defendant as to their intent and their explanation of the transactions and from them all to determine whether or not you are satisfied, beyond a reasonable doubt, that the acts with which they are charged were done with intent to defraud or injure the bank, or to deceive the other officers of the bank, the Comptroller of the Currency, or the agent or examiner appointed to examine the affairs of the bank.

You are the sole judges of the facts, and it is for you to say, after a careful and candid consideration of all the facts and circumstances in evidence in this case, whether or

not the defendants or either of them made any false entry in the books of the Liberty National Bank, as charged in the indictment, within the meaning of these instructions, with the intent to injure or defraud the Liberty National Bank or to deceive the other officers of said bank, the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of said bank, bearing in mind the presumption of innocence with which the law clothes the defendants, as well as the presumption of law that they intended the natural and probable effect of their acts intentionally and knowingly committed.

In other words, while the law presumes every person intends the natural consequences of his acts knowingly committed, it is not conclusive in a case like this in which the specific intent accompanying the act is a necessary element of the defense charged. It is only probative in character, and the jury must determine from all the facts and circumstances in this case offered by the Government, as well as by the defendants whether or not the defendants intended to injure or defraud the Liberty National Bank, or any other person, company or corporation, or to deceive the other officers of the Liberty National Bank or the Comptroller of the Currency, or any agent or examiner appointed to examine into the affairs of said bank. The question of intent, like all other questions of fact, is solely for the jury to determine, but it must be determined by you in this case in accordance with the instructions as given you by the court.

No. 90. The burden of proof, as those words are used and understood in criminal law, is never upon the accused to establish his innocence. It is upon the Government from the beginning to the end of the trial to establish, beyond a reasonable doubt, the guilt of the defendant; and this burden of proof applies to every element necessary to constitute the offense.

No. 91. It is your duty to return a verdict of not guilty on any count of the indictment where the evidence fails to convince you beyond a reasonable doubt of the guilt of the defendant as charged in the indictment, and within the meaning of these instructions; and if the evidence is as consistent with the innocence of the defendant as with his guilt, it is your duty to acquit. In other words, the evidence must be so strong that it excludes every reasonable hypothesis but that of guilt.

No. 92. You are instructed that circumstantial evidence alone is sufficient to sustain a conviction only when the facts

and the evidence can be accounted for only on the hypothesis of guilt.

No. 93. You are instructed that under any count of the indictment you may acquit both defendants or convict both defendants, or acquit one defendant and convict the other; but you must be governed in your decision as to the guilt or innocence of either defendant by the instructions the court gives you.

No. 94. You are instructed that the facts and circumstances relied upon by the Government to convict the defendants or either of them upon any count of the indictment must be proved to the satisfaction of the jury beyond a reasonable doubt; and that the facts and circumstances must be consistent with each other and inconsistent with any other reasonable hypothesis except the guilt of the accused; and the facts and circumstances must point so unerringly to the guilt of the accused as to exclude every other reasonable hypothesis except that of guilt; and unless the facts and circumstances in the case measure up to this standard or requirement, you cannot convict the defendants or either of them under any count of the indictment.

No 95. You are instructed that before you can convict the defendants or either of them of making a false entry in a report of the Liberty National Bank to the Comptroller of the Currency, you must believe from the evidence beyond a reasonable doubt that the defendants charged made, or directed to be made, the entry which is the basis of the accusation; that the entry was false when made, and known to the accused to have been false at the time it was made; and that such false entry so made was done with the intent on the part of the accused to deceive the Comptroller of the Currency, or an agent or examiner appointed under the laws of the United States to examine into the affairs of said banking association.

No. 96. You are further instructed that under Counts Nos. 38, 39 and 40, the mere concealment by the defendants, or either of them, from the person who actually made the entries upon which said counts are based of the information which would have enabled the person making said entries to make correct entries, is not sufficient to warrant the conviction of said defendants on said counts or any of them; but you must believe from the evidence beyond a reasonable doubt that the party accused made the entry or directed it to be made, that it was false when made, and known by the defendant charged to be false at the time it was made.

No. 97. Although you may believe from the evidence beyond a reasonable doubt that the defendants made, or directed to be made, the entry or entries in the minute book or minute books of the Board of Directors of the Liberty National Bank, and although you may believe from the evidence beyond a reasonable doubt that the defendants knew at the time that said entry or entries were false, still you cannot find the defendants guilty under any of Counts 1 to 37, both inclusive, unless you further believe from the evidence beyond a reasonable doubt that the defendants made, or directed, said entry or entries to be made, with the intent then and there to injure or defraud the Liberty National Bank, or to deceive the officers of said bank, or the Comptroller of the Currency, or an agent or examiner appointed under the laws of the United States to examine the affairs of said bank.

Although you may believe from the evidence beyond a reasonable doubt that said entry or entries were false, yet you are further instructed that before you can find the defendants guilty you must not only believe that the entry was false, and that the defendants caused said entry or entries to be made, or made themselves, but you must also believe that the false entry was one that was material, that is to say, one that was vital to the business or conduct of the Liberty National Bank. Any immaterial entry, no matter though it be false, is not such entry as you can convict the defendants, or either of them, upon.

No. 98. You are instructed that the sole and only false entries, if any upon which you can find the defendants, or either of them, guilty under Counts 1 to 37, both inclusive or any one or more of said thirty-seven counts, if you should find them guilty, are those found in the minute books of the directors' meetings. So far as Counts 1 to 37, both inclusive, are concerned, all the evidence introduced as to notes executed by witnesses J. T. Kramer, Dr. M. A. Houser, Ed. Soph, Dr. E. Forrest Hayden, Jim McDonnell, C. F. Powell, W. O. Bohnefeld, R. A. Koons, A. M. Ballard, Mason Kittess, Simon W. Knoten, A. R. Mitchell, The Mingo Company, The Lincoln Company, A. E. Lewis and W. L. Lewis, is to be considered by you for one purpose only, and that is, to show, if it does show, the intent of the defendants in making, or causing to be made, the material entries in the directors' minute books, if the defendants did make said entries, or did cause them to be made.

No. 99. You are instructed that where the bank is the holder of a promissory note, for value, an accommodation maker thereof cannot show, for the purpose of escaping lia-

bility thereon, a contemporaneous, parol agreement with an officer of the bank, that the bank would release the accommodation maker for any liability by reason of the execution or delivery of the note, and not hold him liable thereon.

You are therefore instructed that although you may believe from the evidence in this case beyond a reasonable doubt that the defendants, one or both of them, promised the maker of any of the notes known as accommodation notes that the Liberty National Bank would not hold him responsible for the payment of said note, said promise did not relieve the maker of any such note from liability for the payment thereof, but that such maker of said note would be responsible to said bank for the full amount of said note, principal and interest, although the note was nothing more nor less than what is called accommodation paper. And by "accommodation paper" is meant an instrument whose maker executes the same for the purpose of lending his name, or credit, to some other person without anything therefor. Such a person executing such a note is called an accommodation maker, and is liable on the instrument executed by him to a holder for value, notwithstanding such holder at the time of taking the paper knew him to be an accommodation party. And furthermore, if the accommodation paper be executed to a bank, the accommodation party executing the accommodation paper is liable to the bank, although an officer of the bank may have told him before, or at the time of its execution that if he would execute and deliver the accommodation paper, the bank would not hold him responsible thereon, and would never attempt to collect the note. You are, therefore, instructed, that any and all notes executed and delivered to the Liberty National Bank under the circumstances above set forth are valid and subsisting paper in said bank, and enforceable in said bank so far as the legal obligation of the maker or makers of the note or notes is concerned; and that no maker of any such note can plead, or rely upon, the promise or agreement of any officer of the bank that the bank would not hold the maker or makers liable thereon.

No. 100. You are instructed that an officer of a National Bank has no authority to bind the bank by any agreement with a third party that a note made by such third party to the bank will not be enforced, or said third party not held liable thereon, if the officer of the bank making said agreement is personally interested in the transaction himself; and further, that any knowledge of any such officer of the bank, with reference to such transaction is not imputed to the bank.

No. 101. The court has permitted the introduction of evidence concerning certain transactions between the defend

ants, or one of them, with witnesses, J. T. Kramer, Dr. M. A. Houser, Ed. Soph, Dr. E. Forrest Hayden, Jim McDonald, C. F. Powell, W. O. Bohnefeld, R. A. Koons, A. M. Ballard, Mason Kittess, and A. R. Mitchell, for the sole and only purpose of throwing what light, if any, said transactions may, upon the intent of the defendants, or either of them, with reference to the charges laid in Counts 1 to 37, both inclusive, of the indictment. And in the consideration of this case you are to consider the transactions with said witnesses for that purpose, and for that purpose only, that is to say, you are to consider said transactions for the purpose of showing the intention, if they do, of the defendants, or either of them, with reference to the charges indicated, to-wit: Counts 1 to 37, both inclusive.

(Indorsed upon said Instructions Requested by Defendants appears:)

Filed Jan. 26, 1926. W. V. McClure, Clerk, U. S. District Court.

(Thereupon, on the said 26th day of January, 1926, the court instructed the jury as follows, to-wit:)

The Court: Gentlemen of the jury, with most commendable patience and attention you have now listened to the trial of this case until that point is reached where it becomes the duty of the court to charge you as to the law that will govern you in your deliberations upon verdicts in the case. And notwithstanding it is past our usual time for adjournment I have concluded to submit this matter to you for your decision before we take an adjournment or recess for dinner.

Now I never have had the privilege before of charging you gentlemen as a jury, so there are some preliminary observations that I desire to make before coming directly down to the matter in hand, and that is this: In our courts of justice in this country where cases are tried as this case is being tried before a jury and the court, the responsibility for the doing of exact justice under the law is equally divided between the two bodies, the jury and the court. Now while that responsibility is equal the nature of the obligations and duty to be performed by the jury and by the court is different in kind. The court, and the court alone, is the exclusive judge of the law of the case, and if there be any mistake made in any matter of law, for that mistake the jury is in no sense responsible. The court alone is responsible for the declaring of the law of the case. It is the duty of the jury to take the law precisely as declared by the court, and if any juror here should have any

preconceived idea as to what the law is from any source, and it should differ from what you are charged by the court is the law, it would be your duty to lay aside your preconceived idea, and to adopt the law as given you by the court. On the other hand, the jury and the jury alone is the exclusive judge of the weight of the evidence, the credibility of the witnesses and the facts proven on the trial of the case. And just as the jury must, and does, trust the court to declare the law accurately, so the court must, and does, trust the jury to find what are the true facts of the case from the evidence offered and received here in court and from that source alone.

And so long, I may say, gentlemen of the jury, in our courts of justice in this country, the court disregarding everything only the idea of doing exact justice under the law, shall plainly, clearly, positively declare the law of the case, and the jury shall take that law if declared in that manner and just as courageously, fearlessly, positively find what the facts are and unite the law so declared with the facts so found in the verdict or verdicts returned into court, just so long will we have justice administered in our courts and just so long will we have a right of administration of justice under the law.

Now you already know—must know—your body and this court are mere instrumentalities created by the law for the purpose of doing justice in our courts, and wherever, if at all, a jury shall find other than the true facts of the case for any reason—bias or prejudice or favoritism or anything—or the court from any bias or prejudice is reckless of the trust that the law reposes in him under his oath to declare the law properly, then that is not the administration of justice under the law at all; that is a mere travesty on justice and somebody is wronged to do it.

Now again, in this court we are no respector of persons. If there is anything in our form of Government, if there is anything that the citizen must be able to depend upon absolutely, it is that every party litigant who comes before the court, it does not matter how rich he is or how poor he is or what his color is, or whether it be a corporate body or the government itself, the parties are entitled to justice for their acts determined in the same fair and impartial manner. So the government in this case is entitled to have this case as it is presented here tried and determined without any favoritism, without any bias or prejudice or passion; and the defendants are entitled to precisely the same fair trial of their case.

Now again I want to say to you, it is sometimes argued before juries in our courts of justice as to whether you will or not convict one of an offense that, under the court's direction, might lead to imprisonment in the penitentiary or jail, or a fine—whatever it might be—but let me say if eve anyone in our country, where the law is rightly administered, is convicted and punished, it must be because he has violated the law of the land, and it is that law that inflicts the punishment and not the jury or the court. As I have said, the jury and the court are purely instrumentalities created by the law for the purpose of determining these things and doing justice. And we often find the doing of justice under the law is not an easy thing. It often devolves upon citizens to perform acts or do things not easy to be done. But no man in this world who does not, when opportunity arises before him, arise to the occasion and do that duty like a man—if they cannot do that they are not worthy of being called men—now in that manner we are going to try and determine this case.

Again let me say, it is a part of the duty of the court in charging a jury to state what the issue or issues are that are to be determined by the verdict or verdicts when returned into court and it is the duty of the court to do that so clearly, plainly and simply that no juror can possibly misunderstand precisely what it is that is being tried and determined by their verdict.

Now what is this case? While it has taken a very considerable time to try it, yet this case in its last analysis is a very simple case. You understand that national banks in our country are instrumentalities or agencies created by the government, that is to say, national banks are created and governed by national laws. It being a national institution, the Congress has a perfect and proper right to say how these national institutions shall be formed, what the people who are engaged in managing these banks shall not do or what will constitute a violation of their duty imposed as officers, if they do these things. Now the government also has a perfect right to expect, in the organization of an instrumentality of the government like a national bank, that the acts of those who conduct the affairs, on account of the great confidence reposed in them by the depositors and those who do business with them, that their acts shall be not only in conformity with the law, but shall be in conformity with upright and honest dealings, because they are selected for the purpose of managing a governmental agency.

Now what in this case? And I am just exactly like counsel has expressed it to you; I do not wish you to misunderstand what the issues are in these cases, because there are forty of

them included in one indictment that we are trying as between the government on the one hand and these defendants. The defendants were presented to a grand jury; that grand jury returned an indictment against them, because you, gentlemen of the jury, understand that in our government no man can be put on his trial for any offense that may be punished by confinement in the federal prison unless the matter is first inquired into by a grand jury, and a grand jury present the charge against him. These defendants, the two Lewis brothers, are charged herewith, one being president and the other vice president, and managing officers of this Liberty National Bank of Tulsa—the grand jury returned an indictment against them—with violating the national banking act in the conduct of this Liberty National Bank in forty counts. Thirty-seven of those counts pertain only to matters that are recorded in the minute books of that bank. The remaining counts are based upon reports made from that bank to the Comptroller of the Currency, because the Comptroller of the Currency is the man at the head, really, of this national banking system, and he and his representatives and agents, and the representatives and agents of the general reserve bank of which the Kansas City Reserve Bank is the head here, keep track over the management of these banks. Now the national banking act, in so far as the charge in this case goes, relates to one division of the law, which I will read:

> "Any officer, director, agent or employe of a federal reserve bank, or of any member bank as defined in the Act of December 23, 1913, known as The Federal Reserve Act, who makes any false entry in any book, report or statement of such federal reserve bank, or member bank, with intent in any case to injure or defraud such federal reserve bank or member bank, or any other bank, body politic or corporate or any individual person, or to deceive any officer of such federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such federal reserve bank or member bank, or the federal reserve board,"

and so on.

Now this entire case is predicated upon the minutes that were entered or charged to have been entered in the books—the minute book of this bank, and three several reports to the Comptroller of the Currency as to the condition of this federal reserve bank. And about those I will speak later.

Now, gentlemen of the jury, this is a criminal prosecution by indictment. The defendants and each of them are

presumed to be entirely innocent of any wrong-doing whatever charged against them in this indictment unless and until their guilt has been established by the evidence offered and received here in court, beyond a reasonable doubt. You understand that when we come to try rights of property or civil rights in our courts of justice, the party that has the greater weight of the credible evidence, or what is called a preponderance of the evidence—the verdict goes to him; but the Government, out of consideration for the protection and safety of the individual, in criminal cases has established a different rule. No one is found guilty of the commission of a crime in a court of justice unless the evidence proves their guilt beyond a reasonable doubt, and this presumption of innocence stays with them notwithstanding all else, until that point is reached where their guilt is shown by the evidence beyond a reasonable doubt.

Now sometimes jurors are bothered by that term reasonable doubt. I do not intend that you shall be bothered with that at all, because I am going to say to you, that term, reasonable doubt, means precisely what it says—a reasonable doubt. On the other hand, it does not mean the mere or bare possibility of innocence, because almost anything in this world is possible, but it does mean such a substantial doubt in the mind of a person of ordinary prudence and intelligence as will cause such person to pause or hesitate before engaging in the graver affairs of life.

Now how are you going to tell whether you have a reasonable doubt in your minds? Whenever the jury takes into consideration all the facts and circumstances of the case, and from considering all these facts and circumstances, there is produced in the minds of the several members of the jury trying the case an abiding conviction that they must be guilty as charged, then there is no longer any reasonable doubt in their minds.

Now as I say—and I am not going to bother you or confuse you by taking them up separately—I will say the first thirty-seven counts of this indictment are predicated upon what is said to be false entries in the minute books of this bank, that is to say, the defendants are charged with having either made or caused to be made, minutes purporting to be the true records of this bank as to the holding of, in one case a stockholders' meeting, in the other, meetings of the board of directors of this institution, and as to what was done at these meetings in the way of electing an officer, I think, in one case, and in passing upon the expense account of the bank, and in passing upon the report of a discount committee in regard to loans made by the bank

Now the Government's contention is that those minutes, to which any one examining into the affairs of this bank would have a right to resort to see how the bank was being managed—that those minutes are absolutely false, in this: That they do not record, as they purport to do, what was done at all; that they are false in showing that any board of directors had a meeting and passed upon these matters at all; and that these defendants caused those minutes to be kept in that manner, knowing them to be false, and with the intent of defrauding the reserve bank, or the Liberty Bank or of deceiving those who examined into the affairs of the bank as provided under The National Banking Act. Now if you find beyond a reasonable doubt that these minutes were prepared as claimed here by the Government, stating that the board of directors met, showing who were there, and that they passed upon the expense account of the bank, and the report of a discount committee, and no such meetings were held, and no such things occurred, but that they were caused to be made by these defendants or made by them, and made with the intent of defrauding this bank, or the reserve bank itself, or of deceiving the people who examined into the affairs of this bank, then in such a case, if you believe that beyond a reasonable doubt, you will find the defendants guilty. Failing to find that, you will find them innocent.

Now I am asked to charge here, by the defense, that this provision of law under which these defendants are being tried, that this false entry must be in an account book of the bank in regard to the financial standing of the bank. I have concluded in my mind that that is not the law, so I am charging you positively to the contrary, and I am going to refuse the request offered, and give you an exception to that refusal. And this is the question, as I have stated to you, for your determination so far as the first thirty-seven counts are concerned: were these minutes in this minute book—do they purport to record transactions had in this bank or by the board of directors of the bank in regard to passing upon the report of a discount committee, or passing upon the expense account of the bank, and are they absolutely false in stating what they do state, and were they made or caused to be made by the defendants in this case or either of them? Now as far as the first thirty-seven counts are concerned, that is the question you will have to look into. I will send out with you the indictment and you can see from that what the particular charge is in the particular count of the indictment yourselves.

Now when we come to the remaining three counts in the indictment, that is, 38, 39 and 40, they have nothing to do with the minute book at all. They have to do with what the Gov

ernment says are three reports made by this institution as to its financial condition to the Comptroller of the Currency.

Now the charge in that is this: It is charged that the defendants made or caused these reports to be made stating that the loans and discounts of this bank were so many dollars, in one case I think about a million and in the other two cases I think something over two million dollars, and that that statement to the Comptroller of the Currency is false and was known by the defendants when made to be *be* false, because it does not truly reflect the loans and discounts of the bank, that is to say, in one instance, in relation to this money that was paid to some one there in the bank by two of these witnesses here—you will remember their names—from dividends that were paid on certain stocks, that one of the defendants in this case was said to have sold to the party making the note to the bank, and that this stock was attached as collateral security, and being collateral security of the bank, that the bank had the right to have the proceeds from that collateral security, dividends and value of stock and all applied to the reduction of this note of twenty-one thousand and some dollars that was not so applied, but was by the defendants, or one of them—and that it was done or caused to be done, or done by both—that was diverted to some other purpose and there should have been a reduction of the loans and discounts in the sum of fourteen thousand dollars.

Now the only other matter is this: You remember this evidence about the young man who asserted, as I remember it, that he made his note of $15,000.00 to the bank as collateral security for a note of $13,600.00 of his friend Mitchell, and it is charged here that that note never was delivered to this bank to be discounted or to become the primary obligation of the maker of this note at all; that it was left there as merely collateral security to Mitchell's note, but instead of that it was placed among the loans and discounts of the bank without the consent of the person signing the note, and therefore, it is the contention of the Government that the loans and discounts were shown to be that much in excess of what they really were.

Now you gentlemen are the exclusive judges, as I said, of the evidence. You will examine into that transaction and you will determine whether that note was left with the bank to become an obligation of the maker of the note to the bank, that is a primary obligation or whether, as contended by the Government, it was left there merely as collateral security for a debt then owing the bank, because I say to you that if it was left there, and the agreement was it was to be collateral

security to a note of Mitchells' to the bank, then of course the bank would have no right, nor its officers, to discount that note and put it in as a primary obligation.

But now it is not enough in this case, gentlemen, for you to find that there was an error in the amount of the loans and discounts; before the report could be false of course there would have to be an error, but that is not enough. Was that report made, or caused to be made by the defendants in this case or either of them? If so was it false—that is, did it fail to reflect truthfully the true state or condition of the finances of that bank in regard to the loans and discounts? If not, was that statement made in there by the defendants or caused to be made by the defendants for the purpose of deceiving the Comptroller of the Currency as to the actual condition of the bank? Now these matters of an entry being false, of the making or causing to be made of such entry by the defendants with knowledge that they were false, and the intent, must all be proven to your minds beyond a reasonable doubt. If you find beyond a reasonable doubt these things as against the defendants under the evidence here, you will find a verdict of guilty. Failing to so find, you will find a verdict of not guilty.

Now a great part of the evidence in this case has been offered not because there was any charge in this indictment based upon the evidence offered in regard to these notes of these various parties but to enable you to determine whether the intent in the minds of the defendants was such as is prohibited, and made punishable by this act, all to determine what they knew of that bank, what they were doing in it, what influence they had over those working for them, what directions they gave, all for the purpose merely of determining the intent with which the thing was done. Now ordinarily one is presumed to intend the natural and necessary consequences of an act done by him, but even if you find that the defendants made or caused to be made these entries, that they were false and known by them to be false, yet the Government must further show beyond a reasonable doubt as I have defined that term, that it was the intent in the minds of the defendants or one of them to either deceive the examining agents, the Comptroller or to defraud the bank in the doing of the making of those entries.

Now something has been said about circumstantial evidence. Of course no man can open up the mind of another and determine from the workings of that brain or mind what the thought is that is actuating it to do what it does. We have to judge that from facts and circumstances offered and received in evidence. So to enable you to judge what the defendants

knew and thought, if you find they did the act charged here, all of that evidence has been offered to you.

Circumstantial evidence, when it arises to a sufficient degree of dignity or proof is just as sufficient to convict on as is direct and positive evidence, that is to say, when the evidence excludes every other reasonable hypothesis than that sought to be established then the matter is regarded as evidence. I have said to you that you were the exclusive judges of the weight of the evidence, the credibility of the witnesses and the facts proven upon the trial of the case.

The responsibility now, gentlemen of the jury, is with you. If these defendants violated this law in the management of this bank as charged by the Government, you will find them guilty, or you can find, if you believe the evidence so warrants, one of them guilty and the other not guilty, all depending upon your view of the evidence offered and received in the trial of this case and under the law as I have given it to you.

As I say, now in doing this you should take into consideration the interest or lack of interest any witness has in the result of this litigation, their knowledge or apparent knowledge of the matters concerning which they testify and should determine the matter in view of all of these things and give to the evidence of any witness just so much credibility as you believe it is entitled under the circumstances.

There will be a form of verdict on each of the counts as to each of the defendants, that is, one finding as to each of the defendants on each of the counts. I will send those verdicts with you. Of course, you will make the verdict to conform with your findings in regard to the matter. I will send with you also the indictment so you can see precisely what each count relates to.

Now you will take this case in the manner that I have indicated, because now I have given you the law as I believe the law to be, and therefore I have denied the request that you have proffered here. I say, I have given you the law as I view the law. If I am wrong about that you are bound by it and that can be corrected, but so far as this trial is concerned the law that I have given you must be regarded as the law, and the responsibility is now with you. You may retire to consider of your verdict.

And I will say we will not receive your verdict when arrived at tonight, but tomorrow morning at ten o'clock. When you arrive at a verdict in the matter it will be sealed and your

foreman will keep the verdict, and you will say nothing to anyone what the result of your deliberations have been until you return your verdict at ten o'clock tomorrow morning. We have had a very full day, and you will be allowed to be taken to your quarters when you have arrived at your verdict.

Mr. Davidson: If your honor please, the defendants each desire an exception to your honor's instruction defining what book of the bank a false entry may be made in.

The Court: And you will also desire an exception to my refusal to give——

Mr. Davidson: Yes, sir.

The Court: The——

Mr. Davidson: Instruction requested by us as to the definition of the book—as to the meaning of a book of the bank.

The Court: I want you to have that question squarely in the record because if I am wrong I want it to be easy for you to rectify it.

Mr. Davidson: Further, if your honor please, we want an exception to each one of the instructions requested by us which your honor did not give. Your honor gave some of them I know——

The Court: I looked over them, and I think I have covered them. I think I have given everything in the general charge except the one, and that I did not——

Mr. Davidson: Well, your honor may have, but to save the record we would like to have an exception to each instruction requested that your honor did not give.

The Court: Very well.

Mr. Williams: Let the record show, if your honor please, that these exceptions are made in the presence of the jury, and before they retire.

The Court: Oh, yes, they are here.

(The defendants excepted in the presence of the jury, before it retired, to the refusal of the court to give each of the instructions requested, numbered 1 to 101 inclusive, each defendant taking his separate exception to each separate instruction requested, and refused, and said exceptions were by the court allowed.

And the defendants requested the court to indorse on each one of said instructions, over his signature, that said instruction was requested but was by the court refused, and an exception allowed; but the court was of the opinion that the record was properly saved on the refusal to give said instruc-

tions without said indorsements thereon, and for that reason declined to so indorse them.)

The Court: Now, gentlemen, you may retire and consider of your verdict.

(Thereupon two bailiffs were duly sworn by the clerk to take charge of the jury during their deliberations.)

The Court: The jury will not be brought into court until ten o'clock in the morning. You may retire now, gentlemen.

Mr. Dodds: May the court please, the marshal has asked me about taking the jury to supper now.

The Court: The jury may go to your room and organize, and whenever you desire, the marshal will take you to your dinner.

You may now announce a recess of the court until ten o'clock tomorrow morning.

Thereupon court took a recess until 10:00 o'clock Wednesday morning, January 27, 1926.

10:00 o'clock a.m., January 27th, 1926, all parties being present and represented by counsel, court reconvened pursuant to adjournment, and the following proceedings were had, to-wit:

The Court: You may bring the jury in, Mr. Marshal.

(Thereupon the marshal conducts the jury into the jury box.)

The Court: Mr Foreman, have you arrived at a verdict, in the matter submitted to you?

The Foreman: Your honor, we have not yet arrived at a verdict.

The Court: Getting along pretty well, are you? I say, you are making progress with the case?

The Foreman: Yes, sir.

The Court: Well, as I have said to you, your body is the exclusive judge of the weight of the evidence, the credibility of the witnesses, and the facts proven on the trial of the case; yet the court of course is the judge of the law, and if there is any matter of law in the case any point that I have not made plain, it is the duty of the court to make it so plain that not a member of the jury can fail to understand precisely what that is. Now, is there any matter of law that is giving you any trouble?

The Foreman: I don't think it is a matter of law. It is one or two points of the testimony.

The Court: Well, of course, so far as the evidence is concerned, that is a matter for the determination, of course, of the jury. I couldn't determine a question of that kind for you. But if there is any matter that you think the court can enlighten you upon—even if you should ask me about a question of fact, I would tell you that was for your consideration—but if it should be a matter of law that I can make clear, I want to help you out in it. Now, is there any question.

The Foreman: Well, your honor, would it be permissible to ask the reporter to read a certain portion of the testimony to refresh our memories?

The Court: Do you have that in such shape that you can do that, Mr. Reporter?

The Reporter: Yes, sir.

The Court: Very well, that may be done. The evidence of what witness?

The Foreman: A part of the evidence of the witness, Mr. Genau, I believe it was—the examiner.

The Court: Very well. Do you have his evidence there? You have a transcript made of this evidence, do you not?

The Reporter: We have, your honor, but we delivered it to counsel for the respective sides.

The Court: Well, do you have copies here, either side?

Mr. Dodds: I can send for a copy of the transcript.

The Court: I know, but we can probably get at it quicker than that.

(Thereupon, the reporter leaves the court room to get his shorthand notes taken upon the trial of said cause, and returns to the court room.)

The Court: Now, gentlemen of the jury, if the evidence warrants, you can find the defendants, or either of them, guilty of any one or more of the counts, or not guilty of any one or more of the counts; or it is within your province, if impossible to agree on all the counts, to agree on such counts as you can agree on, and not agree on the others. I am merely saying that that is your province, gentlemen of the jury. I am not recommending that be done at all, but it is within your power. But I suppose the jury understood that before.

The Foreman: Yes, sir.

(Thereupon the entire testimony of Mr. Joseph A. Genau was read by the reporters to the jury.)

The Court: Now, gentlemen, having your memories refreshed as to the evidence of this witness, is there any other question you have to ask that might give you any light?

The Foreman: I believe, your honor, that that answers most of the questions we had there. There is just one thing I would like to ask.

The Court: Very well.

The Foreman: If it would be permissible for the jury to have the exhibits in their possession to examine them.

The Court: I apprehend so, gentlemen.

Mr. Dodds: Yes.

The Court: I suppose——

Mr. Dodds: Yes, we would request that all the exhibits be given to the jury as it may call for them.

Mr. Davidson: We have no objection, if your honor please, but we would like for the jury to take all the exhibits if they are going to take any.

The Foreman: We would like to have all of them.

The Court: Very well.

The Foreman: I believe that's all.

The Court: Now, gentlemen of the jury, of course we have been a considerable time here, and of course it must necessarily be to both the Government and the defense considerable expense. You have all the evidence that the parties have—or, at least all that the parties have seen proper to produce, or that they had at their command. You have the entire case before you. If at any time there should be any matter of law over which you disagree, it is the duty of the court to make that so clear to your minds that you cannot. Now, I desire that you go out and reason together, and if possible, return your verdicts in this case. The court will wait here for your return of verdicts. The exhibits will all be sent in to you for your examination, if they throw any light upon the case. You may now retire and consider your verdicts.

(Thereupon, pursuant to the order of court, the jury again retires in the custody of their sworn officers, to consider further of their verdicts; and later, and at 12:40 p.m., on the same day, all parties, and their attorneys being present in court, the jury is again returned to the box, and the following proceedings were had, to-wit:)

The Court: Mr. Foreman, of the jury, have you agreed upon a verdict?

The Foreman: Your honor, we have.

The Court: You may pass it up, please.

(Thereupon the marshal takes the verdicts from the foreman of the jury, and passes them to the court.)

The Court: Read the verdicts, Mr. Clerk.

(Thereupon the verdict in re Allie E. Lewis is read by the clerk; and thereupon the verdict in re William Lloyd Lewis is read by the clerk.)

The Court: So say you all, gentlemen of the jury.

Several Jurors: We do.

The Court: Very well. Now do you desire to dispose of this matter at the present time.

Mr. Davidson: If your honor please, we desire to let the record show an exception to the jury's verdicts.

Now, if you honor please, we want to file a Motion in Arrest of Judgment in the case, and it will take sometime to prepare that.

The Court: What do you say, Mr. District Attorney?

Mr. Dodds: The District Attorney suggests, if your honor please, that we will be glad to leave it to your own convenience whatever that may be.

The Court: Well now, I apprehend that when judgment is pronounced it can at least be pronounced at any point—that is, any court town in this district, or might it also be done at Tulsa? I am likely to be, perhaps, in the City of Tulsa in the course of some weeks from now.

Mr. Davidson: If your honor please, I would suggest this: That Muskogee is only a short distance from Tulsa, and the communication is good there; that we would not raise any objection to the sentence being pronounced at Muskogee.

The Court: I doubt whether you could, gentlemen.

Mr. Davidson: Well, I doubt it myself, if your honor please, very much.

The Court: Well, why would it not be more convenient—if I should be called—someone suggested something about my convenience—as a matter of fact you do not realize yet that I am quite a busy man, and just when I can be in Tulsa to take up matters in connection with this, or Muskogee, or any place, I don't know.

Mr. Davidson: Let me suggest this, if your honor please: I don't, of course, know what your honor will do about the bond in this case. The defendants are on $5,000 bond apiece

in this case. They are under a bond of $37,000 apiece in the case that has been tried.

The Court: Yes.

Mr. Davidson: And they are under $10,000 bond, the two of them together, in another case that is pending.

The Court: Now, let me ask you—is the bond in this case a continuing bond? Does this bond——

Mr. Lee: Yes, sir; it is to appear from term to term.

The Court: Until the final determination of the case?

Mr. Lee: Until the final determination and disposition of the case.

The Court: Then it would not be necessary to give, in my judgment, any additional bond.

Mr. Davidson: That is what I thought. Now, if your honor please, if you will let these defendants stand on their bond in this case why we could have everything read, so that at any time it suited your honor's convenience to pass sentence in this case, and dispose of everything your honor would have to dispose of at that time—I know it would suit our convenience, and I hope your honor can arrange it so it will suit your convenience.

The Court: What do you say to that.

Mr. Dodds: At your honor's convenience. We realize it would be very difficult to do it any other way; and I would like the District Attorney to say what he may have to say.

The Court: Of course, if I should be called to Tulsa, I could about as conveniently come by Muskogee to Tulsa—almost as I go direct to Tulsa.

Mr. Davidson: Yes, sir.

Mr. Dodds: Tulsa is another district, and a different clerk and general officers.

The Court: Yes. The only reason I suggested this, Judge Kennamer, when I met him here, said he had some matters at Tulsa that he would have to have some help in and wanted to know if I could help him, and I told him, outside of when I was engaged with my own work, or some other work that I would be required to do, I would be very glad to help him out if I could. That is the only thing. Very well then.

I will require you to submit copies of your motions—of course you will furnish the other side copies of your motions, but send those with your brief of authorities on the subject to me at Kansas City, and the other side will send a brief of their authorities. You will give them your brief and they

will give you theirs; and you can prepare an order submitting those matters which I will sign before I leave here so that I will know when they are ready for submission. Then I will take them up and consider them at my chambers at such odd times as I may have, and inform myself so that I will be informed before I hear your argument on them, wherever that may be, if I conclude I would like oral argument after considering them.

Mr. Davidson: Yes, sir.

The Court: And then I will notify you of a day in the future at which the defendants will have to be present, if I so direct, at Muskogee. Now, this is the latter part of January. I have no idea that I will be able to reach that matter before the latter days of March, or April, or may not be able to then.

Mr. Davidson: Well, now, if your honor please, there is just one other thing that I want to suggest, and that is: That the term of the court here at Ardmore be kept open so that there will be no question about anything being done out of the term time.

The Court: That must be; but the shape the case is in, not being finally disposed of—Yes, whatever judgment is entered will be at another term, if the other term should intervene so that would not give you any trouble. But I apprehend your practice here is—is this a different division?

Mr. Lee: No, sir.

The Court: It is all one division.

Mr. Lee: It is all one division.

Mr. Davidson: Now, if your honor please, let me make this suggestion now: This has bearing on what I have in mind.

The Court: All right.

Mr. Davidson: This old Eastern District was divided by an order of the Senior Circuit Judge into two divisions, and the boundaries of it defined, and Congress came on then and passed a bill recognizing and approving that division of the Eastern District. Now, there is no division of the present Eastern District, but there are divisions of the old Eastern District.

The Court: Well, the old Eastern District has ceased to exist, except for the purpose of prosecuting those offenses that were committed within that district, and when that district existed—I have passed on all of those matters in an opinion somewhere.

Mr. Davidson: Well, this case is one of those cases, if your honor please.

The Court: Well, anyhow——

Mr. Davidson: Just for our own protection, if your honor please, I wish that the term be kept open.

The Court: Anyhow, Mr. Clerk, you will keep this term of court—When is your next regular term here?

The Clerk: October is the next regular term.

The Court: Well, this term will remain open here until that term, does it?

The Clerk: It just recesses—that is the way they have been——

The Court: You don't close the term?

The Clerk: No, sir.

The Court: All right, then we will make an order that this term will not close until the ensuing term in October.

Mr. Davidson: All right.

The Court: Now, is there anything more? If not, gentlemen of the jury, I have kept you here until after lunch time today, and I will direct that the bailiffs, if you care to, take you to the hotel that you can have your lunch. You have been very prompt and diligent in the discharge of an important duty that you owe your Government and the citizenship of this district. Not a member of this jury has been late at any time that we have recessed the court. You have given very careful attention to the matter in hand, and you are entitled to, and deserve, the compliments of the officers of this court for the diligent and punctual manner in which you have discharged a very important and a very difficult duty. So, now, with the compliments of the officers of this court you will be excused, and you will go with the bailiffs—they have not had their lunch—and take your lunch wherever you are in the habit of taking that lunch, before you are finally excused, in the event you desire to do so. If there be anyone who wants to go out of the city why of course they will not be compelled to go. So you will be excused from further attendance upon this case, and upon the court.

The Foreman: Your honor, may I express the appreciation of the jurors for the treatment and every courtesy we have been shown? We appreciate it!

The Court: I am very glad, gentlemen, that you have been treated as you should be, like gentlemen, selected from a community like this district.

(Thereupon the jury retires from the court room.)

Mr Davidson: If your honor please, there is one other

matter that is not material to this jury. May we have an order of the court here permitting the taking of the files and the exhibits, and everything in the case, to Tulsa, where we can work on them there? Both reporters live there at Tulsa, and I do too. And they won't let the files go out of the district——

The Court: You may take them on agreement of counsel that he will return them at any time ordered.

You may now announce an indefinite recess of the court.

(Thereupon, pursuant to the order of the court, the marshal announces an indefinite recess of the court.)

And, thereafter, and on the same day, to-wit, the 27th day of January, 1926, being a regular day of the regular October Term of the United States District Court for the Eastern District of Oklahoma at Ardmore, Oklahoma, the Clerk of the United States District Court for said Eastern District of Oklahoma, filed the verdict of the jury relative to Allie E. Lewis, which said verdict is in words and figures as follows, to-wit:

In the District Court of the United States for the Eastern District of Oklahoma.—United States, vs. Allie E. Lewis. —No. 9346.

Verdict.

We, the jury in the above entitled cause, duly empaneled and sworn, upon our oaths, find the defendant Allie E. Lewis guilty, as charged in the 1st count of the indictment.

We, further find the defendant guilty as charged in the (2nd) count of the indictment.

We, further find the defendant guilty as charged in the (3rd) count of the indictment.

We, further find the defendant guilty as charged in the (4th) count of the indictment.

We, further find the defendant guilty as charged in the (5th) count of the indictment.

We, further find the defendant guilty as charged in the (6th) count of the indictment.

We, further find the defendant guilty as charged in the (7th) count of the indictment.

We, further find the defendant guilty as charged in the (8th) count of the indictment.

We, further find the defendant guilty as charged in the (9th) count of the indictment.

We, further find the defendant guilty as charged in the (10) count of the indictment.

We, further find the defendant guilty as charged in the (11th) count of the indictment.

We, further find the defendant guilty as charged in the (12th) count of the indictment.

We, further find the defendant guilty as charged in the (13th) count of the indictment.

We, further find the defendant guilty as charged in the (14th) count of the indictment.

We, further find the defendant guilty as charged in the (15th) count of the indictment.

We, further find the defendant guilty as charged in the (16th) count of the indictment.

We, further find the defendant guilty as charged in the (17th) count of the indictment.

We, further find the defendant guilty as charged in the (18th) count of the indictment.

We, further find the defendant guilty as charged in the (19th) count of the indictment.

We, further find the defendant guilty as charged in the (20th) count of the indictment.

We, further find the defendant not guilty as charged in the (21st) count of the indictment.

We, further find the defendant guilty as charged in the (22nd) count of the indictment.

We, further find the defendant guilty as charged in the (23rd) count of the indictment.

We, further find the defendant guilty as charged in the (24th) count of the indictment.

We, further find the defendant guilty as charged in the (25th) count of the indictment.

We, further find the defendant guilty as charged in the (26th) count of the indictment.

We, further find the defendant guilty as charged in the (27th) count of the indictment.

We, further find the defendant guilty as charged in the (28th) count of the indictment.

We, further find the defendant guilty as charged in the (29th) count of the indictment.

We, further find the defendant guilty as charged in the (30th) count of the indictment.

We, further find the defendant not guilty as charged in the (31st) count of the indictment.

We, further find the defendant guilty as charged in the (32nd) count of the indictment.

We, further find the defendant guilty as charged in the (33rd) count of the indictment.

We, further find the defendant guilty as charged in the (34th) count of the indictment.

We, further find the defendant not guilty as charged in the (35th) count of the indictment.

We, further find the defendant guilty as charged in the (36th) count of the indictment.

We, further find the defendant not guilty as charged in the (37th) count of the indictment.

We, further find the defendant guilty as charged in the (38th) count of the indictment.

We, further find the defendant guilty as charged in the (39th) count of the indictment.

We, further find the defendant guilty as charged in the (40th) count of the indictment.

R. R. HEATH, Foreman.

(Indorsed upon said verdict appears:) Filed Jan. 27, 1926. W. V. McClure, Clerk U. S. District Court.

And, thereafter, and on the same day, to-wit, the 27th day of January, 1926, being a day of the regular October Term of the United States District Court for the Eastern District of Oklahoma, at Ardmore, Oklahoma, the Clerk of the United States District Court for the Eastern District of Oklahoma, filed the verdict of the jury relative to William Lloyd Lewis, which said verdict is in the words and figures as follows, to-wit:

In the District Court of the United States for the Eastern District of Oklahoma.—United States, vs. William Lloyd Lewis.—No. 9346.

Verdict.

We, the jury in the above entitled cause, duly empaneled and sworn, upon our oaths, find the defendant William Lloyd Lewis guilty, as charged in the 1st count of the indictment.

We, further find the defendant guilty as charged in the (2nd) count of the indictment.

We, further find the defendant guilty as charged in the (3rd) count of the indictment.

We, further find the defendant guilty as charged in the (4th) count of the indictment.

We, further find the defendant guilty as charged in the (5th) count of the indictment.

We, further find the defendant guilty as charged in the (6th) count of the indictment.

We, further find the defendant guilty as charged in the (7th) count of the indictment.

We, further find the defendant guilty as charged in the (8th) count of the indictment.

We, further find the defendant guilty as charged in the (9th) count of the indictment.

We, further find the defendant guilty as charged in the (10th) count of the indictment.

We, further find the defendant guilty as charged in the (11th) count of the indictment.

We, further find the defendant guilty as charged in the (12th) count of the indictment.

We, further find the defendant guilty as charged in the (13th) count of the indictment.

We, further find the defendant guilty as charged in the (14th) count of the indictment.

We, further find the defendant guilty as charged in the (15th) count of the indictment.

We, further find the defendant guilty as charged in the (16th) count of the indictment.

We, further find the defendant guilty as charged in the (17th) count of the indictment.

We, further find the defendant guilty as charged in the (18th) count of the indictment.

We, further find the defendant guilty as charged in the (19th) count of the indictment.

We, further find the defendant guilty as charged in the (20th) count of the indictment.

We, further find the defendant not guilty as charged in the (21st) count of the indictment.

We, further find the defendant guilty as charged in the (22nd) count of the indictment.

We, further find the defendant guilty as charged in the (23rd) count of the indictment.

We, further find the defendant guilty as charged in the (24th) count of the indictment.

We, further find the defendant guilty as charged in the (25th) count of the indictment.

We, further find the defendant guilty as charged in the (26th) count of the indictment.

We, further find the defendant guilty as charged in the (27th) count of the indictment.

We, further find the defendant guilty as charged in the (28th) count of the indictment.

We, further find the defendant guilty as charged in the (29th) count of the indictment.

We, further find the defendant guilty as charged in the (30th) count of the indictment.

We, further find the defendant not guilty as charged in the (31st) count of the indictment.

We, further find the defendant guilty as charged in the (32nd) count of the indictment.

We, further find the defendant guilty as charged in the (33rd) count of the indictment.

We, further find the defendant guilty as charged in the (34th) count of the indictment.

We, further find the defendant not guilty as charged in the (35th) count of the indictment.

We, further find the defendant guilty as charged in the (36th) count of the indictment.

We, further find the defendants not guilty as charged in the (37th) count of the indictment.

We, further find the defendant guilty as charged in the (38th) count of the indictment.

We, further find the defendant guilty as charged in the (39th) count of the indictment.

We, further find the defendant guilty as charged in the (40th) count of the indictment.

R. R. HEATH, Foreman.

(Indorsed upon said verdict appears:) Filed Jan. 27, 1926. W. V. McClure, Clerk U. S. District Court.

And, thereafter, to-wit, on the 15th day of February, 1926, being a day of the regular October Term of the United States District Court for the Eastern District of Oklahoma at Ardmore, Oklahoma, the defendants, Allie E. Lewis and William Lloyd Lewis, filed in this cause their Motion for a New Trial.

Which motion is in words and figures as follows, to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis, and William Lloyd Lewis, Defendants.—No. 9346 Criminal.

Motion and Grounds for a New Trial.

Come now the defendants, Allie E. Lewis and William Lloyd Lewis and move the court to set aside the verdicts of the jury in the above entitled and numbered cause and grant them a new trial for the following reasons and upon the following grounds:

1. Because the court erred in overruling their motion to dismiss the indictment for want of jurisdiction in the court to try the same.

2. Because the court erred in overruling their amended motion to quash and dismiss the indictment and plea in abatement.

3. Because the court erred in overruling their demurrer to each separate count of the indictment.

4. Because the court erred in sustaining the Government's demurrer to their motion to quash the petit jury panel drawn December 23, 1925, for service as jurors in the trial of this cause, and in refusing to sustain the motion of the defendants to quash said petit jury panel.

5. Because the court erred in admitting incompetent, irrelevant and immaterial evidence during the trial, over the objections of the defendants.

6. Because the court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty as to him on each separate count of the indictment, which motion was interposed by said defendant at the conclusion of the Government's evidence in chief.

7. Because the court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty as to him on each separate count of the indictment, which was interposed by said defendant at the conclusion of the Government's evidence in chief.

8. Because the court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty as to him on each separate count of the indictment, which motion was renewed and interposed by said defendant at the conclusion of all the evidence.

9. Because the court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty as to him on each separate count of the indictment, which motion was renewed and interposed by him at the conclusion of all the evidence.

10. Because the court erred in refusing to instruct the jury to return a verdict of not guilty as to the defendant Allie E. Lewis on each separate count of the indictment.

11. Because the court erred in refusing to instruct the jury to return a verdict of not guilty as to the defendant William Lloyd Lewis on each separate count of the indictment.

12. Because the court erred in giving to the jury each and every instruction excepted to by the defendants, and in refusing to give to the jury each and every instruction requested by the defendants and not given by the court, which instructions given by the court were objected to and exceptions saved in the presence of the jury before the jury retired, and which exceptions to the court's refusal to give the instructions requested by the defendants was taken and saved in the presence of the jury before the jury retired.

13. Because the verdict of the jury is contrary to law.

14. Because the verdict of the jury is contrary to the evidence.

15. Because the evidence under each separate count of the indictment was wholly insufficient to support the verdict of guilty as to the defendants, or either of them.

R. L. DAVIDSON,
W. I. WILLIAMS.
Attorneys for Defendants.

(Indorsed upon the foregoing Motion and Grounds for New Trial appears:) Filed Feb. 15, 1926. W. V. McClure, Clerk U. S. District Court.

And, thereupon, on the same day, to-wit, the 15th day of February, 1926, the defendants Allie E. Lewis and William Lloyd Lewis filed in this case their Motion in Arrest of Judgment;

Which said motion is in words and figures as follows to-wit:

In the United States District Court for the Eastern District of Oklahoma.—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346 Criminal.

Motion in Arrest of Judgment.

Come now the defendants Allie E. Lewis and William Lloyd Lewis and each for himself separately moves the court that the judgment in the above styled cause be arrested as to them and each of them, upon each of the following counts of the indictment, to-wit: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 36, 38, 39 and 40, for the following reasons and upon the following grounds:

1. The new United States District Court of the Eastern District of Oklahoma, created and existing under and by virtue of the Act of Congress of February 16, 1925, had no jurisdiction over the offenses charged for the purpose of indictment or trial, and had no jurisdiction to try this cause, or to try the defendants, or either of them, upon the indictment herein for the reason that the offenses charged in the indictment were not committed within the territorial jurisdiction of the present Eastern District of Oklahoma, but were, and are alleged to have committed in Tulsa County, Oklahoma, in the old United States Court for the Eastern District of Oklahoma and outside of the territorial jurisdiction of the present Eastern District of Oklahoma, but in what is now a part

of the Northern District of Oklahoma; and that under the sixth amendment to the Constitution of the United States of America the defendants were and are entitled "to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law;" and the court erred in overruling the motion of the defendants to dismiss the indictment for want of jurisdiction in the new United States District Court for the Eastern District of Oklahoma to try the same.

2. The indictment upon which the defendants were tried and convicted is void because found and returned by an illegal and unlawful grand jury, in that:

(a) The grand jury that found and returned said indictment was not publicly drawn in accordance with the provisions of Section 276 of the Judicial Code, but was secretly drawn and its personnel kept secret until the 22nd day of June, 1925, when it was impaneled and which was the day preceding the day on which this indictment was returned.

(b) The grand jury that returned said indictment was drawn on June 22nd, 1925, from the jury box of the United States District Court for the Eastern District of Oklahoma as the same now exists, which jury box did not then contain the names of any persons from or residing in any of the Counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington; the said jury box having been filled in October, 1924, by the court clerk and jury commissioner of the United States District Court for the Eastern District of Oklahoma as it then existed, with the names of jurors from the entire territorial body of the United States District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925. The United States District Court for the Northern District of Oklahoma was organized on April 1, 1925, and thereafter on the 7th day of April, 1925, the clerk and jury commissioner for the United States District Court for the Eastern District of Oklahoma opened said jury box and withdrew from it the names of all persons from or residing within the foregoing ten counties which formerly composed a part of the territorial jurisdiction of the United States District Court for the Eastern District of Oklahoma, but under the Act of February 16, 1925, became a part of the United States District Court for the Northern District of Oklahoma; that no order of court was made or entered directing the clerk or jury commissioner to withdraw said names from said jury box, nor was any order of court made or entered directing the said grand jury to be returned

from any particular part of the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925; that said grand jury was drawn under the following order of the United States District Court for the new Eastern District of Oklahoma, made by Judge R. L. Williams on May 29, 1925, to-wit:

> "It is ordered that the jury commissioner and the clerk of court direct twenty-three grand jurors and three alternate grand jurors to be at Muskogee on June 22, 1925, at nine o'clock a.m."

That the offenses charged in the indictment in this case are alleged to have been committed in Tulsa County, Oklahoma, prior to February 16, 1925, and the indictment was returned in the new United States District Court for the Eastern District of Oklahoma by a grand jury drawn as aforesaid from the territorial body of the new Eastern District, and that under the provisions of the Constitution of the United States the defendants are entitled to have the grand jury that investigated and returned this indictment drawn from the entire territorial body of the district in which the offenses charged in the indictment are alleged to have been committed, as the same existed at the time of the commission of said offenses, which would be the old United States District Court for the Eastern District of Oklahoma as it existed prior to February 16, 1925.

The trial court therefore erred in overruling the motion of the defendants to quash and dismiss the said indictment and in not sustaining their said motion and plea in abatement.

3. The verdicts in this case are void because found and returned by an illegal and unlawful petit jury, in that a large part of said petit jury was obtained from a venire of thirty jurors drawn from the jury box of the new United States District Court for the Eastern District of Oklahoma, which was filled by the clerk and jury commissioner of said court on September 4, 1925, with the names from the entire territorial body of the new United States District Court for the Eastern District of Oklahoma, and which did not contain the names of any jurors from any of the Counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Ottawa, Rogers, Tulsa or Washington. The said jury box from which the names of said thirty jurors were drawn on December 3, 1925, was filled in October, 1924, by the court clerk and jury commissioner of the United States District Court for the Eastern District of Oklahoma as it now exists, with the names of jurors from the entire territorial body of the new United States District

Court for the Eastern District of Oklahoma as it now exists. The United States District Court for the Northern District of Oklahoma was organized on April 1, 1925, and contains within its territorial jurisdiction the aforesaid ten counties, including Tulsa County, where the offenses charged in the indictment are alleged to have been committed, and no order of court was made or entered directing the said petit jury panel to be returned from any particular part of the United States District Court for the Eastern District of Oklahoma as it existed prior to or since the 16th day of February, 1925; that said petit jury panel was drawn under the following order of the new United States District Court for the Eastern District of Oklahoma, made by Judge R. L. Williams, on December 2nd, 1925, to-wit:

> "It is ordered by the court that the clerk and jury commissioner of this court draw the names of thirty persons from the jury box for petit jurors to appear at Ardmore, Oklahoma, on January 18, 1926, at 9:00 of said date."

That no other order of court was made or entered with reference to the drawing of said petit jury panel; that said petit jury panel was exhausted before any peremptory challenges had been exhausted, with eleven tentative jurors in the box. The defendants each asked that for the purpose of completing said petit jury, the court direct that a jury box be prepared and filled with a sufficient number of names of jurors selected by the clerk and jury commissioner from the entire territorial body of the old United States District Court for the Eastern District of Oklahoma as the same existed prior to the 16th day of February, 1925, and as the same existed at the time the offenses charged in the indictment are alleged to have been committed, and that a sufficient number of names be drawn therefrom to complete the jury panel. The court refused this request of the defendants and ordered an open venire for twenty jurors to be summoned by the marshal of the court from the entire territorial body of the old United States District Court for the Eastern District of Oklahoma at the time the offenses charged in the indictment are alleged to have been committed, from which open venire a sufficient number of jurors were obtained to complete the petit jury for the trial of this cause, the defendants having exercised all the peremptory challenges allowed them under the law in completing said petit jury. None of the jurors summoned by the marshal under the open venire were from any of the ten counties fromerly a part of the old United States District Court for the Eastern District of Oklahoma but now a part of the United States District Court for the Northern District

of Oklahoma, but all of them were citizens and residents of the territory now embraced within the new United States District Court for the Eastern District of Oklahoma as the same has existed since February 16, 1925.

The trial court therefore erred in sustaining the Government's demurrer to the motion of the defendants to quash the petit jury panel drawn December 3, 1925, from which a large part of the jury that returned the verdicts in this case was obtained, and in refusing to have prepared a jury box filled with the names of jurors from the entire territorial body of the old Eastern District of Oklahoma as the same existed at the time the offenses charged in the indictment are alleged to have been committed, and ordering the jury panel from which the jurors for the trial of this case should be selected should be drawn.

4. The evidence offered by the Government under each of said counts was wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

5. The evidence offered by the Government under each of said counts was wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

6. The verdicts of the jury are not supported by the evidence.

7. The verdicts of the jury, if supported by any evidence at all, are not sustained by sufficient evidence and are contrary to the manifest weight of the evidence.

8. The evidence under each of said counts does not exclude every reasonable hypothesis but that of guilt.

9. The trial court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of the Government's testimony in chief.

10. The trial court erred in overruling the motion of the defendant Allie E. Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of all the evidence of the case, because all the evidence offered under each of said counts was wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

11. The trial court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of the Government's testimony in chief.

12. The trial court erred in overruling the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty upon each separate count of the indictment interposed at the conclusion of all the evidence in the case because all the evidence offered under each of said counts was wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

13. Each separate count of said indictment is so vague, indefinite and uncertain that it does not sufficiently state or set forth the offense charged therein against the defendants, or either of them, or the facts constituting the alleged offense, so as to advise the defendants, or either of them, of the exact charge which they are required to meet, or give them a fair opportunity to prepare their defense thereto, or to enable them to avail themselves of a conviction or acquittal in defense of another prosecution for the same offense, or so that the court might be able to determine whether the facts there stated are sufficient to support a conviction if a conviction should be had.

14. The facts set forth in each separate count of the indictment do not constitute an offense under the laws of the United States, nor a crime against the United States; and under each separate count of said indictment the facts therein set forth do not show the commission by the defendants, or either of them, of the offense of making, or directing to be made, a false entry in any book, statement or report of the Liberty National Bank of Tulsa, Oklahoma, within the meaning of the Act of Congress under which defendants are prosecuted. The indictment under each of the following separate counts thereof, to-wit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 36, 38, 39 and 40 fails to set out in haec verba the false entry in the minute book of the Liberty National Bank of Tulsa, Oklahoma, which they are charged therein with having made, or caused to be made, and does not set out or allege any excuse for the failure to set out the false entry in haec verba. Each of said last named counts of the indictment fails to sufficiently describe or identify the false entry which the defendants are charged with having made, or caused to be made, but merely alleges the pleader's conclusion as to the effect of the alleged false entry which is not set out in haec verba or sufficiently described or identified.

15. It appeats from the allegations of each of the following separate counts of said indictment, to-wit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 36, that the alleged false entry

therein charged was made in a minute book of the Liberty National Bank of Tulsa, Oklahoma, wherein were recorded the proceedings of the Board of Directors of the Liberty National Bank, and the proceedings of the stockholders of said bank at the annual stockholders meetings, and that the alleged false entry was not an item of account, nor made in a book of account of the Liberty National Bank of Tulsa, Oklahoma; whereas the word "entry" as used in the Act of Congress under which the defendants are prosecuted means an item of account; and the word "book" as used therein means a book of account of the bank.

16. The trial court erred in overruling the demurrer of the defendants as to each separate count of the indictment.

17. The evidence under each separate count of the indictment is wholly insufficient to establish that the defendant Allie E. Lewis made, or directed to be made, the false entry therein charged.

18. The evidence under each separate count of the indictment is wholly insufficient to establish that the defendant William Lloyd Lewis made, or directed to be made, the false entry therein charged.

This motion in arrest of judgment is made on behalf of each defendant separately and as to each separate count of the indictment, independently of each and all the other counts thereof.

R. L. DAVIDSON,
W. I. WILLIAMS,
Attorneys for Defendants Allie E. Lewis and William Lloyd Lewis.

(Indorsed upon said Motion in Arrest of Judgment appears:) Filed Feb. 15, 1926. W. V. McClure, Clerk U. S. District Court.

Thereafter, to-wit, on the 30th day of March, 1926, the court overruled the Motion for a New Trial as to each defendant;

To which rulings of the court, the defendants, and each of them, at the time, duly excepted.

Thereupon, on the same day, the court overruled the Motion in Arrest of Judgment as to each defendant, upon each count of the indictment;

To which rulings of the court, the defendants, and each of them, at the time, duly excepted.

And thereupon, and on the same day, to-wit, the 30th day of March, 1926, an order overruling said motions above-named was filed in this cause, which order is in the words and figures following, to-wit:

In the District Court of the United States for the Eastern District of Oklahoma.—United States of America, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No. 9346 Criminal.

Order.

On this the 30th day of March, 1926, there came on regularly for hearing the motion of the defendants for a new trial, which was by the court heard and overruled, to which the defendants and each of them at the time duly excepted;

And, thereupon, there came on for hearing the motions of the defendants in arrest of judgment, which were by the court heard and overruled, to which ruling of the court the defendants and each of them at the time duly excepted.

JOHN C. POLLOCK,
Judge.

(Indorsed:)

Filed Mar. 30, 1926. W. V. McClure, Clerk U. S. District Court.

Thereupon, on the same day, the court rendered judgment upon the verdicts theretofore returned in this cause;

To which judgment the defendants and each of them at the time executed.

And, thereupon, and on the same day, to-wit, the 30th day of March, 1926, an order allowing additional time in which to prepare, serve and settle their bill of exceptions was filed in this cause, which order is in words and figures following, to-wit:

In the District Court of the United States for the Eastern District of Oklahoma.—United States of America, vs. Allie E. Lewis and William Lloyd Lewis, Defendants.—No 9346 Criminal.

Order.

The defendants and each of them having requested additional time in which to prepare, serve and settle their bill of

exceptions herein, it is hereby ordered by the court that the defendants be, and they are hereby, allowed thirty days from this date within which to prepare, serve and settle their bill of exceptions.

Given under my hand this 30th day of March, 1926.

JOHN C. POLLOCK,
Judge.

(Indorsed:)

Filed Mar. 30, 1926. W. V. McClure, Clerk U. S. District Court.

The undersigned, Frank Lee, United States District Attorney for the Eastern District of Oklahoma, for and on behalf of the United States of America, in the case of The United States of America versus Allie E. Lewis and William Lloyd Lewis, Criminal No. 9346, do hereby accept service of the above and foregoing Bill of Exceptions in the above-entitled cause, and do hereby agree that said Bill of Exceptions shall be approved, allowed and sustained, and made a part of the record herein.

Dated on this 26 day of April, 1924.

FRANK LEE,
United States District Attorney.

NUGENT DODDS,
Spec. Asst. Attorney General.

Now on this 27 day of April, 1926, the same being a day of the regular October 1925 term of the United States District Court for the Eastern District of Oklahoma, at Ardmore, Oklahoma, the above and foregoing is tendered by the defendants as a Bill of Exceptions herein, and is by the court examined and found to be a full, complete and true Bill of Exceptions in this cause, and of the proceedings at this term of the court.

It is, therefore, by the court ordered that the above and foregoing Bill of Exceptions be, and the same is hereby, settled as a full, complete and true Bill of Exceptions herein, and same is hereby ordered to be filed by the clerk of this court and to be made a part of the record herein.

JOHN C. POLLOCK,
District Judge.

Filed Apr. 28, 1926. W. V. McClure, Clerk U. S. District Court.

In the United States District Court for the Eastern District of Oklahoma—United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants—No. 9346 Criminal.

Petition for Writ of Error.

To the Honorable John C. Pollock, Judge of the District Court aforesaid by assignment.

Now come Allie E. Lewis and William Lloyd Lewis, by their attorneys, and respectfully show that on the 27th day of January, 1926, a jury duly impaneled in the above entitled cause found several verdicts against your petitioners in favor of the United States of America in the above entitled cause, and upon said verdicts a final judgment was entered on the 30 day of March, 1926, against your petitioners in favor of the United States of America.

Your petitioners feeling themselves aggrieved by said verdicts and judgment entered thereon as aforesaid, herewith petition the court for an order allowing them to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Eighth Judicial Circuit under the laws of the United States in such case made and provided.

Wherefore, premises considered, your petitioners pray that a writ of error issue and that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid for the correction of the errors complained of, and herewith assigned, be allowed, and that an order be made providing that said writ shall operate as a supersedeas, and that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals; and that upon the issuance and service of citation, your said petitioners be admitted to bail, upon giving a bond, as in such cases made and provided, in such amount as may be fixed by this court, and that the court do now fix such amount.

W. I. WILLIAMS,
R. L. DAVIDSON,
Attorneys for Petitioners.

Filed in open court Mar. 30, 1926, W. V. McClure Clerk U. S. District Court.

(Caption omitted.)

Assignments of Error.

Now come the defendants Allie E. Lewis and William Lloyd Lewis, by their attorneys, and in connection with their

petition for a writ of error, each for himself says that in the record, proceedings and judgment aforesaid error has intervened to their prejudice, to-wit:

1. The District Court erred in everruling and not sustained the motion of the defendants to dismiss the indictment for want of jurisdiction in the new United States District Court for the Eastern District of Oklahoma to try the cause, upon the ground that the offenses charged in the indictment were not committed within the territorial jurisdiction of the present Eastern District, but are alleged to have been committed in Tulsa County, Oklahoma, in the old United States District Court for the Eastern District of Oklahoma outside of the present Eastern District and in what is now a part of the Northern District of Oklahoma, and that under the sixth amendment to the Constitution of the United States the defendants were entitled to a speedy and public trial by an impartial jury of the state and district wherein the crime was committed, which district must have been previously ascertained by law.

2. The District Court erred in overruling and not sustained the amended motion of the defendants to quash and dismiss the indictment, which was in the nature of a plea in abatement, upon the grounds: (1) that the offenses charged in the indictment were not committed within the territorial jurisdiction of the present Eastern District, but are alleged to have been committed in Tulsa County, Oklahoma, in the old Eastern District outside of the present Eastern District, and in what is now a part of the Northern District of Oklahoma, and that the grand jury that found and returned this indictment was impaneled in and for the United States District Court for the new Eastern District of Oklahoma; and (2) that the grand jury that found and returned said indictment was an illegal and unlawful grand jury for the purpose of investigation and returning the indictment for the offenses charged in the indictment; because (a) it was drawn and constituted exclusively from a territory within the jurisdiction of the present Eastern District of Oklahoma and not from the entire territorial body of the old Eastern District of Oklahoma, as it existed at the time the offenses are alleged to have been committed; and (b) the said grand jury was not publicly drawn in accordance with the provisions of section 276 of the Judicial Code, but was secretly drawn under instructions of the court and the names of the grand jury panel from which the grand jury was obtained were kept secret until the day on which the grand jury was impaneled; that the defendants cannot be legally indicted in any court other than the old United States District Court for the Eastern District of Oklahoma as the

same existed at the time the offenses are charged to have been committed; that under the Judicial Code and the laws of the United States the grand jury must be publicly drawn from the entire territorial body of the district as it existed at the time the offense is alleged to have been committed, unless the court by order direct the grand jury to be returned from some particular part of that district, which was not done in this case.

3. The District Court erred in overruling the demurrer of the defendants to the first count of the indictment, because of the grounds and reasons set forth in said demurrer.

4. The District Court erred in overruling the demurrer of the defendants to the second count of the indictment, because of the grounds and reasons set forth in said demurrer.

5. The District Court erred in overruling the demurrer of the defendants to the third count of the indictment, because of the grounds and reasons set forth in said demurrer.

6. The District Court erred in overruling the demurrer of the defendants to the fourth count of the indictment, because of the grounds and reasons set forth in said demurrer.

7. The District Court erred in overruling the demurrer of the defendants to the fifth count of the indictment, because of the grounds and reasons set forth in said demurrer.

8. The District Court erred in overruling the demurrer of the defendants to the sixth count of the indictment, because of the grounds and reasons set forth in said demurrer.

9. The District Court erred in overruling the demurrer of the defendants to the seventh count of the indictment, because of the grounds and reasons set forth in said demurrer.

10. The District Court erred in overruling the demurrer of the defendants to the eighth count of the indictment, because of the grounds and reasons set forth in said demurrer.

11. The District Court erred in overruling the demurrer of the defendants to the ninth count of the indictment, because of the grounds and reasons set forth in said demurrer.

12. The District Court erred in overruling the demurrer of the defendants to the tenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

13. The District Court erred in overruling the demurrer of the defendants to the eleventh count of the indictment, because of the grounds and reasons set forth in said demurrer.

14. The District Court erred in overruling the demurrer of the defendants to the twelfth count of the indictment, because of the grounds and reasons set forth in said demurrer.

15. The District Court erred in overruling the demurrer of the defendants to the thirteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

16. The District Court erred in overruling the demurrer of the defendants to the fourteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

17. The District Court erred in overruling the demurrer of the defendants to the fifteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

18. The District Court erred in overruling the demurrer of the defendants to the sixteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

19. The District Court erred in overruling the demurrer of the defendants to the seventeenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

20. The District Court erred in overruling the demurrer of the defendants to the eighteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

21. The District Court erred in overruling the demurrer of the defendants to the nineteenth count of the indictment, because of the grounds and reasons set forth in said demurrer.

22. The District Court erred in overruling the demurrer of the defendants to the twentieth count of the indictment, because of the grounds and reasons set forth in said demurrer.

23. The District Court erred in overruling the demurrer of the defendants to the twenty-second count of the indictment, because of the grounds and reasons set forth in said demurrer.

24. The District Court erred in overruling the demurrer of the defendants to the twenty-third count of the indictment, because of the grounds and reasons set forth in said demurrer.

25. The District Court erred in overruling the demurrer of the defendants to the twenty-fourth count of the indictment, because of the grounds and reasons set forth in said demurrer.

26. The District Court erred in overruling the demurrer of the defendants to the twenty-fifth count of the indictment, because of the grounds and reasons set forth in said demurrer.

27. The District Court erred in overruling the demurrer of the defendants to the twenty-sixth count of the indictment, because of the grounds and reasons set forth in said demurrer.

28. The District Court erred in overruling the demurrer of the defendants to the twenty-seventh count of the indictment, because of the grounds and reasons set forth in said demurrer.

29. The District Court erred in overruling the demurrer of the defendants to the twenty-eighth count of the indictment, because of the grounds and reasons set forth in said demurrer.

30. The District Court erred in overruling the demurrer of the defendants to the twenty-ninth count of the indictment, because of the grounds and reasons set forth in said demurrer.

31. The District Court erred in overruling the demurrer of the defendants to the thirtieth count of the indictment, because of the grounds and reasons set forth in said demurrer.

32. The District Court erred in overruling the demurrer of the defendants to the thirty-second count of the indictment, because of the grounds and reasons set forth in said demurrer.

33. The District Court erred in overruling the demurrer of the defendants to the thirty-third count of the indictment, because of the grounds and reasons set forth in said demurrer.

34. The District Court erred in overruling the demurrer of the defendants to the thirty-fourth count of the indictment, because of the grounds and reasons set forth in said demurrer.

35. The District Court erred in overruling the demurrer of the defendants to the thirty-sixth count of the indictment, because of the grounds and reasons set forth in said demurrer.

36. The District Court erred in overruling the demurrer of the defendants to the thirty-eighth count of the indictment, because of the grounds and reasons set forth in said demurrer.

37. The District Court erred in overruling the demurrer of the defendants to the thirty-ninth count of the indictment, because of the grounds and reasons set forth in said demurrer.

38. The District Court erred in overruling the demurrer of the defendants to the fortieth count of the indictment, because of the grounds and reasons set forth in said demurrer.

39. The District Court erred in sutaining the demurrer of the Government to the motion of the defendants to quash the petit jury panel drawn on the 3rd day of December, 1925, for the trial of this cause, and from which a part of the jury that returned the verdicts in this case were obtained, for the reasons specifically set forth in said motion, which are, in substance, that said jury panel was drawn from a jury box

prepared and filled with names of jurors from the present Eastern District of Oklahoma, which box had been filled and constituted as a jury box for the new Eastern District of Oklahoma on September 4, 1925, and did not contain the names of any persons from the ten counties which were formerly a part of the old Eastern District of Oklahoma, but are now a part of the Northern District of Oklahoma, in one of which counties the offenses charged in the indictment are alleged to have been committed, no order of court having been made that said jury panel be returned from any particular part of the old Eastern District or of the new Eastern District. The said motion of the defendants disclosing that it was made in due season; and that the rights of the defendants were prejudiced, in that there existed a bias and prejudice in the counties of the present Eastern District of Oklahoma against persons charged with violating the national banking laws, and in which large numbers of persons sustained losses as stockholders and depositors in state and national banks; whereas, in the ten counties formerly a part of the old Eastern District of Oklahoma, and now a part of the Northern District, which were excluded in filling and constituting the jury box, there had been fewer bank failures than in those from which the jury was drawn and in which less bias and prejudice existed against persons charged with violating the banking laws.

40. The District Court erred in refusing and denying the request of the defendants that the court order a jury box provided and filled as by law required by the clerk and jury commissioner of the old United States District Court for the Eastern District of Oklahoma with names of jurors selected by the clerk and jury commissioner from the entire territorial body of the old Eastern District, and that the court then order a jury panel of sufficient names be drawn from said jury box so constituted, from which to obtain a jury for the trial of this case; and the District Court erred in ordering an open venire for jurors from which to complete the jury for the trial of this cause after the regular panel had been exhausted.

41. The District Court erred in admitting in evidence over the objection and exception of the defendants the testimony of Orville A. Griffey, in substance that as a national bank examiner he depended upon the minute books of the bank for information as to whether or not the board of directors met and functioned as a board, and whether or not they approved loans made by the bank, and examined and approved the expense book of the bank.

42. The District Court erred in admitting in evidence over the objection and exception of the defendants Government's Exhibit No. 24, being the note of Simon W. Knoten to the Liberty National Bank for $17,500, dated June 8th, 1923, and the testimony of Simon W. Knoten in regard thereto in substance that on December 16th, 1922, he executed his note to the Liberty National Bank for $15,000, and used the proceeds thereof for the purchase from the defendant A. E. Lewis 75 shares of capital stock of the bank; that on June 8th, 1923, he executed to the bank Government's Exhibit No. 24, and with the proceeds thereof paid and took up the $15,000 note and received from the bank a cashier's check for $2,500 payable to his order, which was by him indorsed on the back thereof and delivered to the defendant A. E. Lewis, and that he did not understand the latter transaction.

43. The District Court erred in admitting in evidence over the objection and exception of defendants Government's Exhibit No. 25, which is the note of J. W. McDonnell to the Liberty National Bank for $23,313.72 dated May 19, 1923, secured by 432 shares of stock in the Sinclair Oil Company as collateral, and the testimony of J. W. McDonnell in regard thereto in substance that in 1915 or 1916 he made a note to the bank for $12,500 at the request of the defendant W. L. Lewis, the proceeds of which were used to buy stock in the Sinclair Oil Company, which was placed with the bank as collateral to the note; and that his brother Hugh McDonnell at the same time made a note to the bank for the same amount, and that the proceeds thereof were used to purchase other stock of the Sinclair Oil Company, which was placed with the bank behind the Hugh McDonnell note as collateral; that these notes were later renewed from time to time, and that Government's Exhibit No. 25 was the last renewal of the original notes made by him and Hugh McDonnell to the bank, and that all of the stock originally purchased from the proceeds of both notes was behind Government's Exhibit No. 25 as collateral; and that his financial statement to the bank was incorrect in certain particulars.

44. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 26, being the note of E. Forrest Hayden for $5,000, payable to the Liberty National Bank, dated June 14th, 1923, and the testimony of Mr. Hayden in regard thereto in substance that he executed said note to the bank at the request of W. L. Lewis, and that W. L. Lewis stated to him that at the time that in case he signed the note he would not be obligated in any particular, that he would not be assuming any obligation, and that as a matter of securing him that he,

W. L. Lewis and his brother A. E. Lewis, would sign a note in like amount payable to him; that he might take his note up at any time if he so desired; that if he came in and asked for his note and returned their note that his note would be delivered to him; that he received no consideration for his note to the bank except the Lewis note to him for $5,000.

45. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 27, being the note of Wm. O. Bohnefeld, for $10,000, payable to the Liberty National Bank, dated September 16th, 1923, and the testimony of Mr. Bohnefeld in regard thereto in substance that on June 16th, 1923, he executed a note to the Liberty National Bank in the sum of $10,000, at the request of W. L. Lewis; that defendants A. E. Lewis and W. L. Lewis executed to him at the same time a note of like amount; that it was understood that he would not be assuming any liability whatever on his note to the bank, and that the note which defendants gave him would be exchangeable at any time for the note that he gave the bank, whether it be one day, two days, thirty days, or thirty minutes, or any other time; that if he desired to at any time he could bring their note to him back and exchange it for his note to the bank; that this note was renewed by Government's Exhibit No. 27 in September.

The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 28, being the note of M. A. Houser, to the bank for $10,000, dated June 27th, 1923, and the testimony of Mr. Houser in regard thereto in substance that he executed said note at the request of defendant W. L. Lewis; that said defendant told him at the time that he and his brother had an option on an oil property but that they didn't have enough money to finance the thing or handle the deal; that as officers of the bank they didn't feel like borrowing the money from the bank but would like to let him have the money, and that they would give him their personal note for protection; that they would take care of his note to the bank and he would never have to pay any interest or anything else on it, that it would be for only a few days any way.

47. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 29 being the note of the Lincoln Company to the bank for $20,000, dated August 27th, 1923.

48. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 30, being the note of the Mingo Company to the bank for $33,000, dated May 24th, 1923.

49. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 31, being the note of A. E. Lewis to the bank for $34,000, dated July 16th, 1923.

50. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 32, being the note of A. E. Lewis to the bank for $1,000, dated September 15th, 1923.

51. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 33, being the note of W. L. Lewis to the bank for $1,000, dated September 15th, 1923.

52. The District Court erred in admitting in evidence over the objection and exception of defendants, Government's Exhibit No. 34, being the note of W. L. Lewis to the bank for $34,000, dated July 16th, 1923.

53. The District Court erred in admitting in evidence over the objection and exception of defendants, the testimony of John T. Kramer, in substance that he did not know of the existence of Government's Exhibits Nos. 24 to 35, inclusive, until after the sale of the bank's assets to the Security National Bank.

54. The District Court erred in admitting in evidence over the objection and exception of defendants, the testimony of Ray Fellows, in substance that he and Albert Bell were practising attorneys and did legal work from time to time for the defendants; that they incorporated for the defendants The Mingo Company and The Lincoln Company; that the original incorporators of The Lincoln Company were himself, Stanley E. Campbell, and Roy Doyle; that the original incorporators were dummy incorporators; that the real incorporators were the defendants.

55. The District Court erred in admitting in evidence, over the objection and exception of defendants, Government's Exhibit No. 40, being the note of Edward Soph to the bank for $33,000, dated May 29th, 1923, and the testimony of Edward Soph in regard thereto in substance that said note was the renewal of other notes to the bank which he had originally made prior to June, 1921, for the accomodation of the defendants, and that he was assured that the notes were not obligations of his; that the interest and principal would be cared for without him looking after it, and that he was not obligated in any way.

56. The District Court erred in admitting in evidence over the objection and exception of the defendants the tes-

timony of the witness R. C. Lamprich in substance that when the Lincoln Company was incorporated the defendant A. E. Lewis told him that the purpose of organizing the company was to get additional loans from the bank; that they had all the money they could borrow in their own personal name and that this company could borrow more money from the bank.

57. The District Court erred in admitting in evidence over the objection and exception of the defendants Government's Exhibit No. 48, being the note of C. F. Powell to the bank for $25,000, dated May 21st, 1923, and the testimony of the witness C. F. Powell in regard thereto in substance that on the 19th of May, 1923, he executed his note to the bank for $25,000, at the request of the defendant A. E. Lewis upon the representation that said defendant needed the money to help him buy out his partner's interest in a certain oil property in which said defendant already owned a half interest; and that on the 21st of May, said defendant in response to an inquiry as to whether or not the deal had gone through told him there was nothing doing, and that he then told said defendant to credit his checks on the notes and they would fix the matter up later.

58. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 1 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

59. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 2 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

60. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 3 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

61. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 4 of the indictment interposed at the conclusion of the Government's testimony

in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

62. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 5 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

63. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 6 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

64. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 7 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

65. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 8 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

66. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 9 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

67. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 10 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

68. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 11 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

69. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 14 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

70. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 13 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

71. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 14 of said indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

72. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 15 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

73. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 16 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

74. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 17 of the indictment

interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

75. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 18 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

76. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 19 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

77. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 20 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

78. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 22 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

79. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 23 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

80. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 24 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

81. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 25 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

82. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 26 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

83. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 27 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

84. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 28 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

85. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 29 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

86. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 30 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

87. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 32 of the indictment

interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

88. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 33 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

89. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 34 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

90. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No 36 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

91. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 38 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

92. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 39 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

93. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 40 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

94. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 1 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

95. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 2 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

96. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 3 of the indictment interposed at the conclusion of all of the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

97. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 4 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

98. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 5 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

99. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 6 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

100. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 7 of the indictment

interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

101. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 8 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

102. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 9 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

103. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 10 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

104. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 11 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

105. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 12 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

106. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 13 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

107. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 14 of the indictment interposed at the conclusion of all of the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

108. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 15 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

109. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 16 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

110. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 17 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

111. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 18 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

112. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 19 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

113. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 20 of the indictment

interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

114. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 22 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

115. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 23 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

116. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 24 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

117. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 25 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

118. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 26 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

119. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 27 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

120. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 28 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

121. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 29 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

122. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 30 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

123. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 32 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

124. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 33 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

125. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 34 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

126. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 36 of the indictment

interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

127. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 38 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

128. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 39 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis thereon.

129. The District Court erred in overruling and not sustaining the motion of the defendant Allie E. Lewis for a directed verdict of not guilty on count No. 40 of the indictment interposed at the conclusion of all the evidence in the case, all of the evidence under said count being wholly insufficient to warrant a conviction of the defendant Allie E. Lewis.

130. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 1 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

131. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 2 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

132. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 3 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

133. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 4 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

134. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 5 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

135. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 6 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

136. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 7 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

137. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 8 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

138. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 9 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

139. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 10 of the indict-

ment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

140. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 11 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

141. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 12 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

142. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 13 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

143. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 14 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

144. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 15 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

145. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 16 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said

count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

146. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 17 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insuffiicient to warrant a conviction of the defendant William Lloyd Lewis.

147. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 18 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

148. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 19 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

149. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 20 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

150. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 22 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

151. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 23 of the indictment interposed at the conclusion aof the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

152. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 24 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

153. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 25 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

154. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 26 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

155. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 27 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

156. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 28 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

157. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 29 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

158. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 30 of the indict-

ment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

159. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 32 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

160. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 33 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

161. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 34 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

162. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 36 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

163. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 38 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

164. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 39 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said

count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

165. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 40 of the indictment interposed at the conclusion of the Government's testimony in chief, the evidence of the Government under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

166. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 1 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

167. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 2 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

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172. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 7 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

173. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 8 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

174. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 9 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

175. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 10 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

176. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 11 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

177. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 12 of the

indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

178. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 13 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

179. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 14 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

180. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 15 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

181. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 16 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

182. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 17 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

183. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 18 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly

insufficient to warrant a conviction of the defendant William Lloyd Lewis.

184. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 19 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

185. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 20 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

186. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 22 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

187. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 23 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

188. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 24 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

189. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 25 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

190. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 26 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

191. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 27 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

192. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 28 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

193. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 29 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

194. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 30 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

195. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 32 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

196. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 33 of the

indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

197. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 34 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

198. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 36 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

199. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 38 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

200. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 39 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

201. The District Court erred in overruling and not sustaining the motion of the defendant William Lloyd Lewis for a directed verdict of not guilty on count No. 40 of the indictment interposed at the conclusion of all the evidence in the case, all the evidence under said count being wholly insufficient to warrant a conviction of the defendant William Lloyd Lewis.

202. The District Court erred in giving to the jury over the objection and exception of the defendants the following instruction:

> "Now as I say—I am not going to bother you or confuse you by taking them up separately—I will say the first thirty-seven counts of this indictment are predicated

upon what is said to be false entries in the minute books of this bank, that is to say, the defendants are charged with having either made or caused to be made, minutes purporting to be the true records of the bank as to the holding of, in one case, a stockholders' meeting, and in the other, meetings of the board of directors of this institution, and as to what was done at these meetings in the way of electing an officer, I think in one case, and in passing upon the expense account of the bank, and in passing upon the report of a discount committee in regard to loans made by the bank.

Now the Government's contention is that those minutes, to which any one examining into the affairs of this bank would have a right to resort to see how the bank was being managed—that those minutes are absolutely false, in this: That they do not record, as they purport to do, what was done at all; that they are false in showing that any board of directors had a meeting and passed upon these matters at all; and that these defendants caused those minutes to be kept in that manner, knowing them to be false, and with the intent of defrauding the reserve bank, or the Liberty National or of deceiving those who examined into the affairs of the bank as provided under the National Banking Act. Now if you find beyond a reasonable doubt that these minutes were prepared as claimed here by the Government, stating that the board of directors met, showing who were there, and that they passed upon the expense account of the bank, and the report of a discount committee, and no such meetings were held, and no such things occurred, but that they were caused to be made by these defendants or made by them, and made with the intent of defrauding this bank, or the reserve bank itself, or of deceiving the people who examined into the affairs of this bank, then in such a case, if you believe that beyond a reasonable doubt, you will find the defendants guilty. Failing to find that, you will find them innocent.

Now I am asked to charge here, by the defense, that this provision of the law under which these defendants are being tried, that this false entry must be in an account book of the bank in regard to the financial standing of the bank. I have concluded in my mind that that is not the law, so I am charging you positively to the contrary, and I am going to refuse the request offered, and give you an exception to that refusal. And this is the question, as I have stated to you, for your determination so far as the first thirty-seven counts are concerned: Were these minutes in the minute book—do they purport to record

transactions had in this bank or by the board of directors of the bank in regard to passing upon the report of a discount committee, or passing upon the expense account of the bank, and are they absolutely false in stating what they do state, and were they made or caused to be made by the defendants in this case, or either of them? Now, as far as the first thirty-seven counts are concerned, that is the question you will have to look into. I will send out with you the indictment and you can see from that what the particular charge is in the particular count of the indictment yourselves."

203. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that under the law each of the defendants is presumed to be innocent of the crime charged against him in the indictment, and this presumption of innocence continues with them and each of them throughout the trial, until it is overcome by competent evidence which convinces you of their guilt beyond a reasonable doubt; that this presumption of innocence is evidence created by law in favor of each of the accused, whereby the innocence of each of them is established, until the evidence convinces you beyond a reasonable doubt of his, or their guilt."

204. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"Circumstantial evidence is where certain facts or circumstances are proved from which certain inferences flow. It is just as much your duty to convict on circumstantial evidence as it is on direct, or positive evidence, if the circumstantial evidence is sufficiently strong and convincing; but the facts and circumstances must be established beyond a reasonable doubt, and the inferences flowing from said facts and circumstances so established must be certain and positive. And if the circumstantial evidence is as consistent with innocence as it is with guilt, you are not warranted in convicting the defendants or either of them thereon. In other words, the facts and circumstances relied upon to establish guilt must be established by the evidence beyond a reasonable doubt, and when so established, must exclude every reasonable hypothesis of innocence. And unless the circumstantial evidence measures up to this standard, it is your duty to acquit the defendants of the offense charged."

205. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that the word 'entry,' as used in these instructions, means an item of account; and that the phrase 'book of the Liberty National Bank' means a book of account of the Liberty National Bank. And unless you find from the evidence in this case beyond a reasonable doubt that the entry charged to have been made was an entry of an item of an account, and was made in a book of account of the Liberty National Bank, you should not convict the defendants, or either of them, but should render a verdict of not guilty."

206. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that the mere concealment by the defendants or either of them from the person who actually made the entry alleged to be false of the information which would enable the person making said entry to make a correct entry, is not sufficient to sustain a conviction, but that the entry must be made by the party charged, or at his direction."

207. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that under each count of the indictment an intent on the part of the defendants to injure or defraud the Liberty National Bank or to deceive the other officers of the bank or the Comptroller of the Currency of the United States, or an agent or examiner appointed under the laws of the United States to examine the affairs of said banking association, is an essential element of the offense charged, and must be proved to your satisfaction beyond a reasonable doubt: that there is a presumption of law that one intends the natural and probable effect of the acts he knowingly and intentionally does, but this presumption may be overcome by evidence, and the defendant's testimony as to his intent and his explanations of his acts and omissions are competent and material subjects upon the question of his or their intent; and it is your duty to consider all of the evidence of the acts and omissions of the defendants, the rebuttable presumption that one intends the natural and probable effect of his acts, intentionally and knowingly done; the testimony of the defendants as to their intent and their explanation of the transactions, and from them all to de-

termine whether or not you are satisfied beyond a reasonable doubt, that the acts with which they are charged were done with intent to defraud or injure the bank, or to deceive the other officers of the bank, the Comptroller of the Currency, or the agent or examiner appointed to examine the affairs of the bank.

You are the sole judges of the facts, and it is for you to say, after a careful and candid consideration of all the facts and circumstances in evidence in this case, whether or not the defendants or either of them made any false entry in the books of the Liberty National Bank, as charged in the indictment, within the meaning of these instructions, with the intent to injure or defraud the Liberty National Bank, or to deceive the other officers of said bank, the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of said bank, bearing in mind the presumption of innocence with which the law clothes the defendants, as well as the presumption of law that they intended the natural and probable effect of their acts intentionally and knowingly committed.

In other words, while the law presumes every person intends the natural consequences of his acts knowingly committed, it is not conclusive in a case like this in which the specific intent accompanying the act is a necessary element of the offense charged. It is only probative in character, and the jury must determine from all the facts and circumstances in this case offered by the Government, as well as by the defendants, whether or not the defendants intended to injure or defraud the Liberty National Bank, or any other person, company or corporation, or to deceive the other officers of the Liberty National Bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine into the affairs of said bank. The question of intent, like all other questions of fact, is solely for the jury to determine, but it must be determined by you in this case in accordance with the instructions as given you by the court."

308. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"The burden of proof, as those words are used and understood in criminal law, is never upon the accused to establish his innocence. It is upon the Government from the beginning to the end of the trial to establish, beyond a reasonable doubt, the guilt of the defendant; and this burden of proof applies to every element necessary to constitute the offense."

209. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"It is your duty to return a verdict of not guilty on any count of the indictment where the evidence fails to convince you beyond a reasonable doubt of the guilt of the defendant as charged in the indictment, and within the meaning of these instructions; and if the evidence is as consistent with the innocence of the defendant as with his guilt, it is your duty to acquit. In other words, the evidence must be so strong that it excludes every reasonable hypothesis but that of guilt."

210. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that the facts and circumstances relied upon by the Government to convict the defendants or either of them upon any count of the indictment must be proved to the satisfaction of the jury beyond a reasonable doubt; and that the facts and circumstances must be consistent with each other and inconsistent with any other reasonable hypothesis except the guilt of the accused; and that the facts and circumstances must point so unerringly to the guilt of the accused as to exclude every other reasonable hypothesis except that of guilt; and unless the facts and circumstances in the case measure up to this standard or requirement, you cannot convict the defendants or either of them under any count of the indictment."

211. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that before you can convict the defendants or either of them of making a false entry in a report of the Liberty National Bank to the Comptroller of the Currency you must believe from the evidence beyond a reasonable doubt that the defendants charged made, or directed to be made, the entry which is the basis of the accusation; that the entry was false when made, and known to the accused to have been false at the time it was made; and that such false entry so made was done with the intent on the part of the accused to deceive the Comptroller of the Currency, or an agent or examiner appointed under the laws of the United States to examine into the affairs of said Banking Association."

212. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are further instructed that under counts Nos. 38, 39 and 40, the mere concealment by the defendants, or either of them, from the person who actually made the entries upon which said counts are based of the information which would have enabled the person making said entries to make correct entries, is not sufficient to warrant the conviction of said defendants on said counts or any of them; but you must believe from the evidence beyond a reasonable doubt that the party accused made the entry or directed it to be made, that it was false when made, and known by the defendant charged to be false at the time it was made."

213. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"Although you may believe from the evidence beyond a reasonable doubt that said entry or entries were false, yet you are further instructed that before you can find the defendants guilty you must not only believe that the entry was false, and that the defendants caused said entry or entries to be made, or made them themselves, but you must also believe that the false entry was one that was material, that is to say, one that was vital to the business or conduct of the Liberty National Bank. Any immaterial entry, no matter though it be false, is not such entry as you can convict the defendants, or either of them upon."

214. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that where the bank is the holder of a promissory note, for value, an accommodation maker thereof cannot show, for the purpose of escaping liability thereon, a contemporaneous, parol agreement with an officer of the bank, that the bank would release the accommodation maker for any liability by reason of the execution or delivery of the note, and not hold him liable thereon.

You are therefore instructed that although you may believe from the evidence in this case beyond a reasonable doubt that the defendants, one or both of them, promised the maker of any of the notes known as accommodation notes that the Liberty National Bank would not hold him responsible for the payment of said note, said promise did not relieve the maker of any such note from liability for the payment thereof, but that such maker of said note would be responsible to said bank for the full

amount of said note, principal and interest, although the note was nothing more nor less than what is called accommodation paper. And by 'accommodation paper' is meant an instrument whose maker executes the same for the purpose of lending his name, or credit, to some other person without receiving anything therefor. Such a person executing such a note is called an accommodation maker, and is liable on the instrument executed by him to a holder for value, notwithstanding such holder at the time of taking the paper knew him to be an accommodation party. And, furthermore, if the accommodation paper be executed to a bank, the accommodation party executing the accommodation paper is liable to the bank, although an officer of the bank may have told him before, or at the time of, its execution that if he would execute and deliver the accommodation paper the bank would not hold him responsible thereon, and would never attempt to collect the note. You are therefore instructed that any and all notes executed and delivered to the Liberty National Bank under the circumstances above set forth are valid and subsisting paper in said bank, and enforceable in said bank, so far as the legal obligation of the maker or makers of the note or notes is concerned; and that no maker of any such note can plead, or rely upon, the promise or agreement of any officer of the bank that the bank would not hold the maker or makers liable thereon."

215. The District Court erred in refusing to give to the jury the following instruction requested by the defendants:

"You are instructed that an officer of a national bank has no authority to bind the bank by any agreement with a third party that a note made by such third party to the bank will not be enforced, or said third party not held liable thereon, if the officer of the bank making said agreement is personally interested in the transaction himself; and, further, that any knowledge of any such officer of the bank with reference to such transaction is not imputed to the bank."

216. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 1 of the indictment on the grounds set forth therein.

217. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 2 of the indictment on the grounds set forth therein.

218. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 3 of the indictment on the grounds set forth therein.

219. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 4 of the indictment on the grounds set forth therein.

220. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 5 of the indictment on the grounds set forth therein.

221. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 6 of the indictment on the grounds set forth therein.

222. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 7 of the indictment on the grounds set forth therein.

223. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 8 of the indictment on the grounds set forth therein.

224. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 9 of the indictment on the grounds set forth therein.

225. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 10 of the indictment on the grounds set forth therein.

226. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 11 of the indictment on the grounds set forth therein.

227. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 12 of the indictment on the grounds set forth therein.

228. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment

on count No. 13 of the indictment on the grounds set forth therein.

229. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 14 of the indictment on the grounds set forth therein.

230. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 15 of the indictment on the grounds set forth therein.

231. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 16 of the indictment on the grounds set forth therein.

232. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 17 of the indictment on the grounds set forth therein.

233. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 18 of the indictment on the grounds set forth therein.

234. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 19 of the indictment on the grounds set forth therein.

235. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 20 of the indictment on the grounds set forth therein.

236. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 22 of the indictment on the grounds set forth therein.

237. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 23 of the indictment on the grounds set forth therein.

238. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 24 of the indictment on the grounds set forth therein.

239. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 25 of the indictment on the grounds set forth therein.

240. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 26 of the indictment on the grounds set forth therein.

241. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 27 of the indictment on the grounds set forth therein.

242. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 28 of the indictment on the grounds set forth therein.

243. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 29 of the indictment on the grounds set forth therein.

244. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 30 of the indictment on the grounds set forth therein.

245. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 32 of the indictment on the grounds set forth therein.

246. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 33 of the indictment on the grounds set forth therein.

247. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 34 of the indictment on the grounds set forth therein.

248. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 36 of the indictment on the grounds set forth therein.

249. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment

on count No. 38 of the indictment on the grounds set forth therein.

250. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 39 of the indictment on the grounds set forth therein.

251. The District Court erred in overruling and not sustaining the motion of Allie E. Lewis in arrest of judgment on count No. 40 of the indictment on the grounds set forth therein.

252. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 1 of the indictment on the grounds set forth therein.

253. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 2 of the indictment on the grounds set forth therein.

254. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 3 of the indictment on the grounds set forth therein.

255. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 4 of the indictment on the grounds set forth therein.

256. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 5 of the indictment on the grounds set forth therein.

257. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 6 of the indictment on the grounds set forth therein.

258. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 7 of the indictment on the grounds set forth therein.

259. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 8 of the indictment on the grounds set forth therein.

260. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 9 of the indictment on the grounds set forth therein.

261. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 10 of the indictment on the grounds set forth therein.

262. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 11 of the indictment on the grounds set forth therein.

263. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 12 of the indictment on the grounds set forth therein.

264. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 13 of the indictment on the grounds set forth therein.

265. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 14 of the indictment on the grounds set forth therein.

266. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 15 of the indictment on the grounds set forth therein.

267. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 16 of the indictment on the grounds set forth therein.

268. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 17 of the indictment on the grounds set forth therein.

269. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 18 of the indictment on the grounds set forth therein.

270. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judg

ment on count No. 19 of the indictment on the grounds set forth therein.

271. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 20 of the indictment on the grounds set forth therein.

272. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 22 of the indictment on the grounds set forth therein.

273. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 23 of the indictment on the grounds set forth therein.

274. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 24 of the indictment on the grounds set forth therein.

275. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 25 of the indictment on the grounds set forth therein.

276. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 26 of the indictment on the grounds set forth therein.

277. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 27 of the indictment on the grounds set forth therein.

278. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 28 of the indictment on the grounds set forth therein.

279. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 29 of the indictment on the grounds set forth therein.

280. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 30 of the indictment on the grounds set forth therein.

281. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 32 of the indictment on the grounds set forth therein.

282. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 33 of the indictment on the grounds set forth therein.

283. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 34 of the indictment on the grounds set forth therein.

284. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 36 of the indictment on the grounds set forth therein.

285. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 38 of the indictment on the grounds set forth therein.

286. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 39 of the indictment on the grounds set forth therein.

287. The District Court erred in overruling and not sustaining the motion of William Lloyd Lewis in arrest of judgment on count No. 40 of the indictment on the grounds set forth therein.

Wherefore, plaintiffs in error pray that the said judgment of the District Court of the United States may be reversed and held for naught.

R. L. DAVIDSON,
W. I. WILLIAMS,
Attorneys for Petitioners.

Filed in open court Mar. 30, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Order Allowing Writ of Error.

Now on this the 30th day of March, 1926, the defendants in the above entitled cause, Allie E. Lewis and William Lloyd Lewis, present to the undersigned Judge of the United States

District Court for the Eastern District of Oklahoma by assignment, their petition for the allowance of a writ of error to said District Court from the United States Circuit Court of Appeals for the Eighth Judicial Circuit, together with assignment of errors intended to be urged by them, and pray further that said writ shall be ordered to operate as a supersedeas pending appeal, and that upon issuance and service of citation, they be admitted to bail upon giving a bond in such amount as may be fixed, and praying that the amount of said bond be fixed at this time.

On consideration whereof, it is ordered that a writ of error be, and the same is hereby allowed, to have reviewed in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, the judgment and sentence heretofore entered herein.

It is further ordered that said writ of error, when issued and served, as provided by law, shall operate as a supersedeas, and that thereupon all further proceedings in this court be stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

It is further ordered that the amount of the bail bond of the said defendant Allie E. Lewis be and hereby is fixed in the sum of $5000.00 and that the amount of the bail bond of the said defendant William Lloyd Lewis be and the same is hereby fixed at the sum of $5000.00; the sureties on both of said bonds to be approved by me.

JOHN C. POLLOCK,
United States District Judge.

Done at Muskogee on this 30th day of March, 1926.

Filed in open court Mar. 30, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Writ of Error.

United States of America—ss.

The President of the United States of America, to the Honorable Judges of the United States District Court for the Eastern District of Oklahoma, Greetings:

Because in the records and proceedings, as also in the rendition of a judgment on a plea which is in the said United

States District Court before you at the regular Ardmore, October term, 1925, thereof, between the United States of America and Allie E. Lewis and William Lloyd Lewis, a manifest error hath happened to the great damage of the said Allie E. Lewis and William Lloyd Lewis, as by their complain- appears:

We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the 29th day of May, 1926, to the end that the record and proceedings aforesaid, being inspected, the United States Circuit Court of Appeals may cause fur her to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness, the Hon. William Howard Taft, Chief Justice of the United States, this 30th day of March, in the year of our Lord, one thousand nine hundred and twenty six.

Issued at my office in Muskogee, Oklahoma, with the seal of the United States District Court for the Eastern District of Oklahoma, and dated as aforesaid.

W. V. McCLURE,
Clerk of the United States District Court for the Eastern District of Oklahoma.

By LACY GRIMES,
Deputy.

(Seal)

United States of America,
Eastern District of Oklahoma—ss.

Return.

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the United States District Court for the Eastern District of Oklahoma, on this the 30th day of March, 1926.

W. V. McCLURE,
Clerk of the United States District Court for the Eastern District of Oklahoma.
By LACY GRIMES,
Deputy.

(Seal)

Filed in open court Mar. 30, 1926. W. V. McClure, Clerk.

Citation.

United States of America—ss.

To the President of the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the date of this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Eastern District of Oklahoma wherein Allie E. Lewis and William Lloyd Lewis are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Allie E. Lewis and William Lloyd Lewis, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done all parties in that behalf.

Witness, the Hon. John C. Pollock, Judge of the United States District Court for the Eastern District of Oklahoma by assignment, this 30th day of March, 1926.

JOHN C. POLLOCK,
United States District Judge.

(Seal)

Attest: W. V. McCLURE, Clerk,
By LACY GRIMES, Deputy.

I, the undersigned, United States Attorney for the Eastern District of Oklahoma, for and on behalf of the United States of America, do hereby acknowledge service of the within and foregoing citation this 30 day of March, 1926.

FRANK LEE,
United States District Attorney.

(Caption omitted.)

Appearance Bond.

Know All Men By These Presents:

That we, William Lloyd Lewis, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the United States of America in the full and just sum of $5000.00, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord, one thousand nine hundred and twenty-six.

Whereas, lately at the regular October Term, A. D. 1925, of the District Court of the United States for the Eastern District of Oklahoma, in a suit depending in said court between the United States of America, plaintiff, and Allie E. Lewis and William Lloyd Lewis, defendants, and judgment and sentence was rendered against the said William Lloyd Lewis, and the said William Lloyd Lewis has obtained a writ of error from the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit [] of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said William Lloyd Lewis shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Eastern District of Oklahoma, on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for

the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

WILLIAM LLOYD LEWIS,
UNITED STATES FIDELITY & GUARANTY CO.,
(Seal) By F. J. DUNCAN, Atty. in Fact.

Approved: JOHN C. POLLOCK,
Judge of the said court.

Filed Mar. 30, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Appearance Bond.

Know All Men By These Presents:

That we, Allie E. Lewis, as principal, and United States Fidelity and Guaranty Co., as surety, are held and firmly bound unto the United States of America in the full and just sum of $5000.00, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30th day of March, in the year of our Lord, one thousand nine hundred and twenty-six.

Whereas, lately at the regular October Term, A. D. 1925, of the District Court of the United States for the Eastern District of Oklahoma, in a suit depending in said court between the United States of America, plaintiff, and Allie E. Lewis and William Lloyd Lewis, defendants, and judgment and sentence was rendered against the said Allie E. Lewis, and the said Allie E. Lewis has obtained a writ of error from the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the *the* United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said Allie E. Lewis shall appear either in person or by attorney in the United States Circuit Court of Appeals for

the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his said writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence against him shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Eastern District of Oklahoma, on such day or days as may be appointed for a retrial by said District Court and abide and obey all orders made by said court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

ALLIE E. LEWIS,
UNITED STATES FIDELITY AND GUARANTY CO.,
(Seal) By F. J. DUNCAN, Atty. in Fact.

Approved: JOHN C. POLLOCK,
Judge of said court.

Filed Mar. 30, 1926 W. V. McClure, Clerk.

(Caption omitted.)

Praecipe for Transcript and Election to Have Same Printed.

To the Clerk of Said Court:

The defendants herein elect to have the printing of the transcript of the record herein done under your supervision and you are hereby notified and directed, in accordance with the rules of this court, that the defendants in the above entitled cause hereby elect to file in the United States Circuit Court of Appeals for the Eighth Circuit a printed transcript of the record in said cause pursuant to the provisions of the Act of Congress, and you are also hereby notified and directed to include in said transcript the following matters, to-wit:

1. Indictment.

2. Demurrer to the indictment.

3. Order overruling demurrer and allowing exceptions.

4. Order overruling defendant's motion to dismiss the cause for want of jurisdiction in the court to try the same.

5. Order overruling defendants' motion to quash the indictment.

6. Order overruling defendants' motion to quash petit jury panel.

7. Orders overruling deefndants' motion for directed verdict.

8. Verdicts.

9. Order overruling defendants' motion for a new trial.

10. Motion in arrest of judgment.

11. Order overruling defendants' motion in arrest of judgment.

12. Judgment and sentence.

13. Bill of Exceptions No. 1.

14. Bill of Exceptions No. 2.

15. Petiton for writ of error.

16. Assignments of error.

17. Order allowing writ of error.

18. Writ of error and return thereto.

19. Citation and acceptance of service.

20. Supersedeas bonds.

21. Notice of election and printing of record.

22. Clerk's certificate to transcript.

R. L. DAVIDSON,
W. I. WILLIAMS,
Attorneys for Defendants.

Service of the above and foregoing praecipe for record and designation as to printing acknowledged this 28th day of April, 1926.

FRANK LEE,
United States District Attorney.

Filed Apr. 28, 1926. W. V. McClure, Clerk.

(Caption omitted.)

Order.

It appearing to the court that the defendants Allie E. Lewis and William Lloyd Lewis in the above styled cause have *have* asked for an enlargement of time in which to file the record in this cause in the United States Circuit Court of

Appeals for the Eighth Circuit, and that the said defendants have shown to the court that the Clerk of the United States District Court for the Eastern District of Oklahoma cannot have the record in said cause printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit by May 29th, 1926, which is the time required by law and by previous order of this court, and that the said defendants will not have sufficient time for that reason to file the printed record in the said Circuit Court of Appeals on or before May 29th, 1926.

It is therefore ordered, adjudged and decreed by the court that the defendants Allie E. Lewis and William Lloyd Lewis and each of them, are hereby allowed twenty-five days from May 29, 1926, within which to file in the United States Circuit Court of Appeals for the Eighth Circuit the printed record in the above styled cause.

This the 24th day of May, 1926.

JOHN C. POLLOCK, Judge.

Filed May 24, 1926. W. V. McClure, Clerk.

Certificate of Clerk.

United States of America,
Eastern District of Oklahoma—ss.

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of United States of America, Plaintiff, vs. Allie E. Lewis and William Lloyd Lewis, Defendants, No. 9346, Criminal, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the writ of error and citation attached hereto, and returned herewith, are the original writ of error and citation issued in this cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this 9th day of June, A. D. 1926.

W. V. McCLURE, Clerk.

(Seal) By LACY GRIMES, Deputy.

899 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Plaintiffs in Error.)

United States Circuit Court of Appeals, Eighth Circuit.

Allie E. Lewis, et al., Plaintiffs in Error,
No. 7492. vs.
United States of America.

The Clerk will enter my appearance as Counsel for the Plaintiffs in Error.

R. L. DAVIDSON,
W. I. WILLIAMS,
P. O. Box 1523 Tulsa, Okla.

(Endorsed): Filed in U. S. Circuit Court of Appeals. Jun. 21, 1926.

(Appearance of Counsel for Defendant in Error.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

NUGENT DODDS,
Spec. Asst. Attorney General.

FRANK LEE,
United States Attorney, Counsel for Defendant in Error.

(Endorsed): Filed in U. S. Circuit Court of Appeals. Jun. 21, 1926.

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900 (Order of Submission.)

May Term, 1927.

Tuesday, May 3, 1927.

This cause having been called for hearing in its regular order, argument was commenced by Mr. R. L. Davidson for plaintiffs in error, continued by Mr. Frank Lee, United States Attorney, and Mr. Nugent Dodds, Special Assistant to the Attorney General, for defendant in error, and concluded by Mr. R. L. Davidson for plaintiffs in error.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

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901 (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, A. D. 1927.

Allie E. Lewis and William Lloyd Lewis, Plaintiffs in Error,
No. 7492. vs.
United States of America, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of Oklahoma.

Mr. R. L. Davidson (Mr. W. I. Williams with him on the brief), for plaintiffs in error.

Mr. Nugent Dodds, Special Assistant to Attorney General, and Mr. Frank Lee, United States Attorney (Mr. John M. Goldsberry, Special Assistant to United States Attorney, with them on the brief), for defendant in error.

Before Stone and Van Valkenburgh, Circuit Judges.

Van Valkenburgh, Circuit Judge, delivered the opinion of the court.

Plaintiffs in error, Allie E. Lewis and William Lloyd Lewis, were indicted in the United States District Court for the Eastern District of Oklahoma at Muskogee, June 23, 1925. The indictment contains forty counts; the first thirty-seven charge plaintiffs in error with making false entries in a certain minute book of the Liberty National Bank with intent to injure and defraud said bank and
902 divers other persons, companies and corporations, and with intent to deceive the other officers of said bank, the Comptroller of the Currency, and the agents and examiners appointed under the laws of the United States to examine into the affairs of the bank. The last three counts charge plaintiffs in error with making false entries in three different reports of said bank to the Comptroller of the Currency, which reports purported to show the financial condition of said bank at the close of business on certain dates. They allege that these false reports were made with intent to deceive the Comptroller of the Currency and the agents and examiners appointed under the laws of the United States to Examine into the affairs of said bank. Plaintiffs in error were respectively the President and Vice-President of the Liberty National Bank at all times mentioned in the indictment, and as such, exercised practically complete control of its affairs. The board of directors appears to have been selected by

them, held no meetings and exercised no supervision over the institution. The charge was that plaintiffs in error obtained for their personal use several hundred thousand dollars of the money of the bank by procuring third parties to execute notes, the proceeds of which came to and were used by plaintiffs in error; that many of these notes were wholly worthless, and the bank was rendered insolvent. Subsequently, the Liberty National Bank was merged with the Security National Bank of Tulsa, and thereafter, the stockholders of the latter bank were assessed approximately $600,000 because of worthless paper taken over from the Liberty National Bank.

It is further charged that in order to deceive the bank examiners and to convey the impression that the notes, to which reference has been made, had been examined by the discount committee, and approved by the board of directors, plaintiffs in error caused pretended minutes of purported meetings of the board to be written up and signed. In such minutes pretended reports of a discount committee, and approval of such reports by the board, were recited. These minutes were prepared under the express direction of plaintiff in error William Lloyd Lewis, and were signed by the President. As matter of fact, the bank had no acting discount committee, and held no meetings of the board of directors at the times and for the purposes stated in these minutes. Both defendants were found guilty upon all counts of the indictment except
the twenty-first, thirty-first, thirty-fifth and thirty-
903 seventh. Upon the first count of the indictment each defendant was sentenced to pay a fine of $5,000, and costs of prosecution, and to be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a period of five years, and on each of the remaining thirty-five counts to be imprisoned for a period of five years in said penitentiary; the sentences on said last thirty-five counts to run concurrently with each other and with the sentence imposed on count one. The assignments of error contain two hundred and eighty-seven specifications. The errors relied upon are those epitomized by counsel:

1. The grand jury was illegal and void and did not have the power or authority to find and return the indictment.

2. The United States District Court for the new Eastern District of Oklahoma was without jurisdiction to try the defendants on this indictment.

3. The petit jury was an illegal jury because it was not drawn, selected and impaneled by law.

4. Judge Kennamer was without power or authority to pass on the motion to quash the motions to dismiss and the demurrer to the indictment.

5. Each count of the indictment fails to state facts sufficient to constitute a public offense.

6. The false entry charge was not set out in haec verba or by its tenor.

7. The evidence is insufficient to sustain the verdicts.

And, incidentally thereto, that neither defendant made, or directed to be made, the entries charged in the reports to the Comptroller; that the minute book of the bank, not being an account book, does not come within the meaning of the word "book" as used in section 5209 Revised Statutes; and that minutes of the meetings of the board of directors and stockholders are not entries within the meaning of the word "entry" as used in said section; that incompetent evidence was introduced at the trial, and that the court erred in refusing certain instructions requested by plaintiffs in error.

There were originally two judicial districts in the State of Oklahoma,—the Eastern and Western. The judges of
904 the Eastern District were the Honorable R. L. Williams and the Honorable F. E. Kennamer. Upon their failure to agree upon the division of business and the assignment of cases for trial in their district, the Senior Circuit Judge of the Circuit made an order dividing the district into two divisions. The first division included the following places at which the district court was held, to-wit: Vinita, Muskogee, McAllester and Hugo, and the counties tributary thereto. The second division included the following places of holding court, to-wit: Tulsa, Ada, Ardmore and Chickasha, and the counties tributary thereto. The order provided for the division of business and the assignment of cases for trial in the district as follows:

"It is further ordered that all the judicial business of this court, and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decision, and all the judicial business that shall arise in or come from the territory in the First Division on and after the date of this order be, and it is hereby exclusively, assigned to Honorable R. L. Williams. And, because the offices and records of the United States Marshal and the United States District Attorney are at Muskogee and it has been the practice to hold the sessions of the grand

jury for the entire district at Muskogee, the judicial business for the entire district of convening and presiding over the grand jury and of directing its course, of receiving informations, indictments and pleas of guilty, and pronouncing sentences on pleas of guilty, and of arraigning defendants, taking their pleas, and allowing bail before hearing or trial, is assigned to Honorable R. L. Williams. But the argument of law questions and the trial of criminal cases on motions, demurrers and pleas shall be had in the division in which the offense is charged to have been committed and before the judge to whom the judicial work of that division is generally assigned.

"It is further ordered that, except as to the portion of the judicial business in the Second Division relating to the grand jury, the filing of informations, the arraigning of defendants, the taking of pleas of guilty, pronouncing sentences thereon, etc., assigned to Honorable R. L. Williams in the preceding paragraph, all the judicial business of this court and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decision, and all the judicial business that shall arise
905 or come from the territory in the Second Division on and after the date of this order is hereby exclusively assigned to Honorable F. E. Kennamer.

"It is further ordered that, unless and until otherwise ordered by the judge to whom the judicial work of the division in which any county is situated, the cases and issues arising in or coming from such county shall be and hereby are assigned for hearing and trial to the court town to which such county is heretofore in this order declared tributary."

An Act of Congress, approved February 16, 1925, created three independent districts in the State of Oklahoma, designated as the Eastern, Western and Northern. The said newly created Northern District comprises ten counties, which were formerly a part of the old Eastern District, and two counties, which were formerly a part of the old Western District. The new Eastern District comprises the remaining counties of the old Eastern District, and the new Western District comprises the remaining counties of the old Western District. Muskogee and Ardmore remain in the Eastern District, and Tulsa County, in which lies the City of Tulsa, is in the Northern District. It will thus be seen that the Northern District was formed by the transfer of ten counties from the Eastern District and two counties from the Western District. In other respects the Eastern and Western Districts remain as before.

The Act of February 16, 1925, contained the following provisions:

"The present Senior Judge of the Eastern District of Oklahoma be and he is hereby assigned to hold said court in the Eastern District and shall exercise the same jurisdiction and perform the same duties within the said district as he exercised and performed within his district prior to the passage of this act; that the present judge of the Western District of Oklahoma be and he is hereby assigned to hold said court in the Western District of Oklahoma and shall exercise the same jurisdiction and perform the same duties as he exercised and performed within his district prior to the passage of this act. That the present Junior Judge of the Eastern District of Oklahoma be and he is hereby assigned to hold said court in the said Northern District and shall exercise the same jurisdiction and perform the same duties within the said district as he exercised and performed within his district prior to the passage of this act.

906 "Jurisdiction and authority of the courts and officers of the Western District of Oklahoma and of the courts and officers of the Eastern District of Oklahoma as heretofore divided between them by the order of the senior judge of the Circuit Court of Appeals for the Eighth Circuit of the United States over the territory embraced within the said Northern District of Oklahoma shall continue as heretofore until the organization of the District Court of said Northern District, and thereupon shall cease and determine save and except insofar as the authority of the junior judge of said Eastern District is continued in him as judge of said Northern District, and save and except as to the authority expressly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District, and save and except as to any other authority expressly reserved to them or any of them under any law applicable in the case of creation or change of the divisions or districts of District Courts of the United States".

This Act of Congress took effect on the date of its approval, and the District Court for the Northern District of Oklahoma was organized April 1, 1925. The authority expressly reserved by the language just quoted is to be found in section 59 of the Judicial Code, which, so far as applicable, reads as follows:

"Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial".

As has been stated, the indictment was returned at Muskogee, in the Eastern District of Oklahoma, June 23, 1925. This was some time after the Act of Congress establishing in Oklahoma the three districts, Eastern, Western and Northern, to which reference has been made, and after the
907 organization of the district court of said Northern District. The Senior Circuit Judge thereupon assigned Judge Kennamer, as judge of the Northern District, to assist in holding the district court of the United States in and for the several divisions of the Eastern District of Oklahoma. August 5, 1925, the defendants filed an affidavit of prejudice against Judge Kennamer and moved for an order of disqualification, and an authenticated copy thereof to be certified to the Senior Circuit Judge of the circuit; this motion was overruled, the case proceeded to trial before Judge Kennamer, and resulted in a judgment of conviction. This judgment was reversed and remanded by this court upon the ground that the trial judge erred in refusing to disqualify himself upon the application made. Lewis, et al., v. United States, 14 Fed. (2d) 369.

Thereafter, Judge Pollock was designated, under the provisions of the Judicial Code. The case was tried at Ardmore in the Eastern District. From the judgment of conviction resulting the case comes again to this court on error. At the trial exceptions of the defendant to the jurisdiction of the court and to the legality of the juries, grand and petit, were duly preserved.

At the hearing counsel for plaintiffs in error abandoned their contention that the appointment of Judge Kennamer to sit in the Eastern District of Oklahoma was without authority and that he had no power to pass upon the motion to quash the indictment, the motions to dismiss and the demurrer for that reason; but it is still insisted that the action of the court in overruling these motions and this demurrer was wrong. In addition to the contention that the indictment fails to charge a

public offense, it is claimed that, because the offenses are alleged to have been committed before the change in the districts and their boundaries was made, plaintiffs in error can legally be tried only in the old Eastern District, as originally constituted, including the ten counties transferred by the Act of February 16, 1925, to the Northern District; that neither grand nor petit jury was legally drawn because these ten counties were not included in the drawings, and finally, that under the division order of the Senior Circuit Judge above set out, plaintiffs in error should have been tried in the second division of the old Eastern District, at Tulsa, the place to which the judicial business of the county in which the offenses are charged to have been committed was made tributary by that division order.

908 With respect to the jurisdiction of the court and the drawing of the juries the rule was announced by this court when this case was heard before on writ of error. These same points in substance were urged and were resolved against plaintiffs in error. (14 Fed. (2d) 369). We adopt the reasoning of the opinion in that case without quotation therefrom.

We hold that section 59 of the Judicial Code, hereinabove set out, has express application here, in that it provides for a trial in the district from which counties have been transferred in the same manner as if such counties had not been transferred, unless upon application of the defendant the court shall order the cause to be removed to the new district for trial, provided, of course, that the offense was committed in one of the counties so transferred to the new district. Upon the organization of the Northern District of Oklahoma the divisional order of the Senior Circuit Judge ceased and terminated except in so far as the authority of the Junior Judge of the Eastern District was continued in him as judge of said Northern District, and except as to the authority expressly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District. This conferred upon plaintiffs in error the right to have this case tried at Tulsa, in the present Northern District, if, upon their application, the court should order the cause to be removed to the Northern District for trial. In our judgment, this limits the application of the divisional order after the organization of the district court in said Northern District. Authority was conferred upon the district court of the Eastern District—that district having

had jurisdiction of the offense when committed—to try the case in the absence of application for such transfer. No such application was made. Counsel for plaintiffs in error were asked by the trial court if it was their purpose to claim their right to try the case in the Northern District. They answered that it was not their purpose so to do.

In addition to the reasoning in Lewis, et al., v. United States, supra, these suggestions may be added. The judge of the Eastern District, before the passage of the Act of February 16, 1925, by general order directed the names of jurors from the ten transferred counties to be removed from
909 the jury boxes for the Eastern District, thereby, in effect, restricting the drawing of jurors to the counties remaining in the district. A practical interpretation of the Act of Congress contemplated the continuance of the Eastern District of Oklahoma, not as a stranger to the former district, but with new boundaries, after the analogy of the transfer of a county or counties from districts in other cases. This district was previously ascertained by law just as in the case of a district from which counties are transferred, and, in order that the constitutional rights of defendants, respecting venue, might strictly be preserved, jurisdiction was expressly retained in that part of the district, in which an offense was committed, upon application of a defendant. In the absence of such application, the court of the Eastern District could proceed as in other cases within its jurisdiction. In this Act of Congress, and the procedure under it, in the instant case, certainly the spirit, and we think the letter, of the fundamental law was preserved.

The objection to the sufficiency of the evidence is two-fold. First, that minute books are not books as contemplated by the statute; and, second, that the reports to the Comptroller of the Currency were not made by the defendants. We think the statute broadly covers all books, entries in which are calculated to deceive the Comptroller of the Currency and the officers of the bank. These minute books were most important under the circumstances of this case. Had they not disclosed that these loans, amounting to hundreds of thousands of dollars, had been passed on by the proper committee of the directors, those loans conceivably would have been investigated and challenged. The result was that the funds of the bank were misappropriated by plaintiffs in error through the instrumentality of deceptive entries in books of the bank. It is true that in a number of cases cited it has been taken for granted that the entries referred to in the statute are entries

in books of account, strictly so-called. Such, of course, are the usual entries that come before the courts, but no decision has either expressly, or by necessary implication, confined the application of the statute to such books of account. The word "entry", by common usage, is not so limited. Any notation in a book of the bank, calculated and intended to give information concerning matters affecting its financial integrity and the soundness of its business methods, must come within the scope of the comprehensive language
910 employed in the statute. As to the reports made to the Comptroller it is sufficiently shown that they were sent and caused to be sent by the defendants, and with their knowledge, whether by explicit direction in each case is immaterial. Morse vs. United States, (C. C. A. 2) 174 Fed. 539. As to the responsibility of officers having control and management see opinion of this court in Cooper vs. United States, 9 Fed. (2d) 216-222.

The alleged incompetent evidence referred to in the assignment of errors consisted of certain notes made for the accommodation of the defendants under an agreement that the makers would not be liable thereon and never be called upon to pay the same. Some of the notes specified are specifically mentioned in counts of the indictment, but all bore upon the intent of the defendants and were competent for that reason.

It is urged that in charging the making of a false entry it is necessary to set out the entry in haec verba or by its tenor, or allege a good and sufficient reason for not so doing. Count one of the indictment may be taken as typical:

"The grand jurors of the United States of America, empaneled and sworn in the District Court of the United States for the Eastern District of Oklahoma, at the Special March Term of said court, at Muskogee, in the year 1925, and inquiring for said district, upon their oath present, that Allie E. Lewis and William Lloyd Lewis, each late of the City of Tulsa, Oklahoma, were, on March 20, 1923, at said City of Tulsa, in said district, and within the jurisdiction of this court then and there respectively directors and officers to-wit, the said Allie E. Lewis was the president and the said William Lloyd Lewis was a vice-president, of a certain national banking association theretofore organized and established and then and there existing and in operation and doing business as, and under the name, The Liberty National Bank of Tulsa, under and by virtue of the laws of the United States concerning national banks, and which said bank was then and there a member bank of the Federal Reserve Bank of Kansas City,

Missouri, as designated by The Reserve Bank Organization Committee, to-wit, in Federal Reserve District Number 10; said Allie E. Lewis and said William Lloyd Lewis each being then and there actively engaged in the management of the business and affairs of said association by virtue of their official relation thereto as such president and vice-
911 president, respectively, thereof, and as such officers of said association possessing a power of control, direction and management over the moneys, funds, credits, books, reports, records and statements of said association; by virtue of their said official relationship to said association, and their respective power of control, direction and management over the moneys, funds, credits, books, reports, records and statements thereof, unlawfully, feloniously, knowingly, wrongfully and wilfully, with intent on their part, and on the part of each of them, to injure and defraud said banking association, and divers other persons, companies and corporations to the grand jurors unknown, and to deceive the other officers of said member bank, the Comptroller of the Currency of the United States, and the agents and examiners appointed under the laws of the United States to examine the affairs of said banking association, did make and cause to be made, in a certain record book of said banking association then and there used by said association in the regular course of its banking business, for the purpose of recording therein the minutes of the meetings of its Board of Directors, and the minutes of the meetings of its stockholders, and then and there known and designated as, to-wit, Minute Book No. 2, on, to-wit, the aforesaid 20th day of March, 1923, a certain false entry on that certain page of said minute book numbered 23 which said entry then and there was, and is, false, and which said entry they, the said Allie E. Lewis and William Lloyd Lewis, each then and there well knew to be false, to-wit, an entry which then and there falsely purported to show and which then and there did in substance and effect falsely declare that the Board of Directors of said association, at a meeting of said Board of Directors held on, to-wit, March 20, 1923, approved a report of the Discount Committee of said association on all loans made by said association subsequent to February 27th, 1923, and prior to said 20th day of March, 1923, being loans numbered 17086 to 18050, inclusive, in the books and records of said bank; whereas, in truth and in fact no such report was approved by said Board of Directors, who did not then or at any time prior or subsequent thereto, at any meeting of the Board of Directors of said association, approve a report of such Discount Commit-

tee as to the said loans so numbered 17086 to 18050, inclusive, as aforesaid, all of which said Allie E. Lewis and said William Lloyd Lewis each then and there well knew, contrary to the form of the statute of the United States in
912 such case made and provided and against the peace and dignity of the United States."

This description of the false entry specified by number the notes that were the basis of defendants' alleged fraudulent misappropriations as having been approved by the Discount Committee and the Board of Directors. An examination of the various counts of the indictment convinces that the tenor of the entries are set out with sufficient particularity and the pleading in that respect is good as against demurrer and certainly in the absence of request for a bill of particulars. In some counts the description may be less full than in others, but inasmuch as the sentences run concurrently a failure in any one or more of the counts to set forth the charge with requisite particularity, which is not conceded, becomes immaterial.

The contention that the indictment fails to state facts sufficient to constitute a public offense is founded both upon the alleged failure to set out the false entries with sufficient particularity and upon the insistence that minute books are not books susceptible of false entries within the meaning of the statute. Both contentions are ruled against plaintiffs in error.

With respect to the refusal of the court to give certain instructions requested by counsel for plaintiffs in error, and inspection of the record discloses that the instructions asked were either fully covered by the court in its charge or contained vices which would necessarily lead to their rejection. The charge of the court fully covered the law of the case.

We have given careful and patient consideration to all points raised in brief and argument. We are unable to find in them error calling for reversal. The judgment accordingly is affirmed.

Filed November 28, 1927.

913 (Judgment.)

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1927.

Monday, December 5, 1927.

Allie E. Lewis and William Lloyd Lewis, Plaintiffs in Error,
No. 7492. vs.
United States of America.

In Error to the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgments and sentences of the said District Court, in this cause, be, and the same are hereby, affirmed without costs to either party in this Court.

It is further ordered by this Court that the defendants in the Court below, Allie E. Lewis and William Lloyd Lewis, do surrender themselves to the custody of the United States Marshal for the Eastern District of Oklahoma, in execution of the judgment and sentence imposed upon them, and each of them, within thirty days from and after the date of the filing of the mandate of this Court in the said District Court.

December 5, 1927.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 7492

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,
Plaintiffs in Error,
vs.
UNITED STATES OF AMERICA, *Defendant in Error.*

IN ERROR TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PETITION *for* REHEARING.

The plaintiffs in error, Allie E. Lewis and William Lloyd Lewis, respectfully ask the court for a rehearing in this cause, and that the opinion of the court entered on December 3, 1927, be set aside and vacated and the judgment of the District Court for the Eastern District of Oklahoma be set aside and the indictment against the plaintiffs in error ordered dismissed, and for grounds and reasons therefor, the plaintiffs in error respectfully represent to the court: *(1)* That this court, in its opinion, has misstated the facts as they actually exist and are shown in the record and has evidently failed to grasp and fully comprehend the grounds urged against the jurisdiction of the court for the new Eastern District of Oklahoma to *indict* or *try* the plaintiffs in er-

ror. *(2)* That the opinion of the court is in irreconcilable conflict with a prior decision of this court in the case of *Case* v. *United States*, 14 Fed. (2nd Series), 510. *(3)* That the court, in its opinion, has misconstrued the Sixth Amendment to the Constitution of the United States, section 59 of the Judicial Code, and the Act of February 16, 1925, and failed to make proper application thereof to the uncontroverted facts actually existing and shown in the record. *(4)* That the court has misconstrued the words "entry" and "book" as used in section 5209. *(5)* That the court has erred in holding the evidence is sufficient to sustain the conviction on the last three counts of the indictment.

I.

The court, in its opinion, says:

> "August 5, 1925, the defendants filed an affidavit of prejudice against Judge KENNAMER, and moved for an order of disqualification, and an authenticated copy thereof to be certified to the Senior Circuit Judge of the Circuit; this motion was overruled, *the case proceeded to trial before Judge Kennamer and resulted in a judgment of conviction. This judgment was reversed and remanded by this court upon the ground that the trial judge erred in refusing to disqualify himself upon the application made. Lewis, et al.*, v. *United States, 14 Fed. (2d. Series), 369. Thereafter, Judge Pollock was designated under the provisions of the Judicial Code. The case was tried at Ardmore in the Eastern District. From the judgment of conviction resulting, the case comes again to this court on error.*"

The court has confused the instant case with an entirely different case against the plaintiffs in error, which was reversed by this court in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369. *These two cases are not the same case, but are*

separate and distinct prosecutions. This is the first time the instant case has been in the Circuit Court of Appeals. Judge Kennamer did not try this case on the merits in the court below and there has been but one conviction in this case and that was before Judge Pollock at Ardmore in the court for the new Eastern District.

The indictment in the case of *Lewis* v. *United States*, reported in 14 Fed. (2nd Series) 369, was found and returned in the United States court for the first division of the old Eastern District, on October 9, 1924, several months before the Act of Congress of February 16, 1925, was passed, and contained twenty-three counts, one for conspiracy, twenty for wilful misapplications and two for making false entries in reports to the comptroller of the currency. That case was tried at Muskogee before Judge KENNAMER in August, 1925, resulting in a conviction, from which an appeal was taken to the Circuit Court of Appeals, and the case was reversed by the Circuit Court of Appeals on the ground that Judge KENNAMER was disqualified by the filing of an affidavit of personal bias and prejudice on August 5, 1925. In that case, Judge KENNAMER made on order entered of record, that the petit jurors should be drawn from twenty certain particular counties named in the order.

In the instant case, the indictment was found and returned at Muskogee in the court for the *new Eastern District* of Oklahoma on June 23, 1925, several months after the passage of the Act of Congress of February 16, 1925, and after the organization of the court for the Northern District, which took place on April 1st, 1925, and contained forty counts, the first thirty-seven for making false entries in a certain minute book of the Liberty National Bank and the last

three for making false entries in certain reports to the comptroller of the currency. An affidavit of personal bias and prejudice was also filed against Judge KENNAMER in the instant case, which he overruled, but he did not try the instant case on the merits, although he did, before the filing of the affidavit of personal bias and prejudice, rule *at Muskogee in the court for the new Eastern District* of Oklahoma, on the motion to dismiss for want of jurisdiction, the motion to quash and plea in abatement and the demurrer to the indictment. This case remained in abeyance until the early part of the year 1926, when it was tried before Judge POLLOCK at Ardmore in the court for the new Eastern District. No order of court was ever made or entered of record in this case directing the drawing of the grand jury or the petit jury from any particular part of the new Eastern or the old Eastern District and no order of court was made by Judge KENNAMER or anyone else assigning this case for trial at Ardmore, Oklahoma, instead of Tulsa, Oklahoma. The case was tried at Ardmore in the court for the *new Eastern District* of Oklahoma at the regular October, 1925, term of said court resulting in a conviction, from which this appeal has been prosecuted. It is plainly and patently clear, therefore, that the case reported in 14 Fed. (2nd Series) 369, is not the same case as that before this court now and the jurisdictional questions involved are not the same. In the first case, there was no question raised as to the jurisdiction of the court to return the indictment, it having been found and returned prior to the passage of the Act of February 16, 1925, and was then pending for trial at Tulsa, Oklahoma, in the second division of the old Eastern District. While it is true we did raise, in that case, the question of the jurisdiction of the court for the *new Eastern District* to try the plaintiffs in er-

ror on that indictment, we conceded, in fact, contended, that the court for the second division of the old Eastern District, had full and complete jurisdiction to try the plaintiffs in error on that indictment at Tulsa in the second division of the old Eastern District and since the Circuit Court of Appeals reversed the case on the ground that Judge KENNAMER was disqualified upon the filing of the affidavit of personal bias and prejudice, the way is open for the Government yet to try the plaintiffs in error on that indictment in the proper court and venue.

This court, in its opinion in the instant case, says:

> "The judge of the Eastern District, before the passage of the Act of February 16, 1925, by *general order*, directed the names of jurors from the ten transferred counties to be removed from the jury boxes for the Eastern District, thereby, in effect restricting the drawing of the jurors to the counties remaining in the district."

This is an erroneous statement, because the judge of the Eastern District, neither before nor after the passage of the Act of February 16, 1925, made any order, either general or special, directing the names of jurors for the ten transferred counties, including Tulsa County, to be removed from the jury box for the Eastern District. The Government, in its brief in this case, did assert that after the organization of the court for the Northern District, and before the drawing of the grand jury that returned the indictment in this case, Judge WILLIAMS gave verbal directions to his clerk, at the request of the district attorney, to delete the jury box of the old Eastern District of all names for the ten counties of the old Eastern District which were not then a part of the new Eastern District, for the purpose of constituting a legal jury box for the court of the new Eastern District, but it is not

contended by the Government that any order to that effect was ever made and entered of record, and the record shows affirmatively that such an order was not made or entered.

It is gravely important that this court should keep clearly in mind a true and correct statement of the facts, to which the law is applied, which facts should be simply, clearly and *correctly* set out in the court's opinion, and the court, we feel confident, will correct these misstatements in its opinion, after they have been called to its attention.

II.

The opinion of the court in this case is in direct conflict with the case of *Case* v. *United States*, 14 Fed. (2nd Series) 510, decided by this court on August 13, 1926, in which Circuit Judge Sanborn and District Judges Woodrough and Scott participated.

In *Case* v. *United States, supra*, the division order made by Judge Sanborn on July 23, 1924, dividing the old Eastern District into two divisions was carefully considered and construed by this court. In that case, the offense was committed in Muskogee County, Oklahoma, on November 17, 1924, and the defendants had been indicted before and the case was pending in the old Eastern District on February 16, 1925, when the Act of Congress of that date became effective, creating the present three new and independent judicial districts in Oklahoma. The case was tried at Tulsa, Oklahoma, on the 13th day of March, 1925, before Judge Kennamer, the plaintiff in error in that case contending that he could not have been tried on March 13, 1925, on the charge preferred against him elsewhere than at Muskogee, Oklahoma, before the Honorable R. L. Williams, because under the division order of Judge Sanborn above referred to, and the Act of Con-

gress of February 16, 1925, the case had been exclusively assigned for trial *at Muskogee,* before Honorable R. L. Williams. The Circuit Court approved such contention and said:

> "Afterwards, and on the 16th day of February, 1925, the President approved an Act (32 Statute 945, ... (Compiled Statute, SS. 1088, 1088-E)), which in its effect ratifies and confirms the above order made by Judge Sanborn * * *."

And the court also said:

> "It thus appears that at the time of the commission of the offense charged, as well as at the time of the trial, *the place of the trial* of the offense had been ascertained and fixed at Muskogee in the County of Muskogee, and the Senior Judge of the original Eastern District, Hon. Robert L. Williams, had been designated and assigned as the judge to preside at such trial, and the Junior Judge, Hon. F. E. Kennamer, had been specifically excluded from that function, the word 'exclusive' twice used in the order being capable of no other construction.";

and that:

> "After the order for division of business was made, and certainly after the Act of Congress confirming the order was passed, the ascertainment by law of the *place of trial* for the offense with which this petitioner was charged, was definitely settled. It was so settled previous to his trial, and the attempt to try him *at another and different place* by a judge who had been specifically excluded from the function, was not a mere irregularity, but wholly without lawful authority."

And also that:

> "The proceedings here disclosed, being in contravention of the order and the Act of Congress, were clearly void and the petitioner for writ of *habeas corpus* was deprived of his liberty without authority of law."

The offenses charged in the instant case are alleged to have been committed in Tulsa, Oklahoma, in the year 1923. The indictment was found and returned on June 23, 1925, after the Act of Congress of February 16, 1925, had taken effect and after the court for the Northern District of Oklahoma had been organized.

This division order of Judge SANBORN, which has been approved and ratified by Congress in the Act of February 16, 1925, operated to assign the instant case for trial at Tulsa, in the second division of the old Eastern District, because the offense is alleged to have been committed in Tulsa County before the Act of February 16, 1925, was passed. This division order further provided that:

> "But the argument of *law questions* and the trial of criminal cases on *motions, demurrers, and pleas, shall be had in the division in which the offense is charged to have been committed* and before the judge to whom the judicial work of that division is generally assigned."

Judge KENNAMER ruled on the motion to dismiss, the motion to quash and the demurrer *at Muskogee*, as the assigned judge of the court for the new Eastern District of Oklahoma. Muskogee is located in the first division of the old Eastern District, whereas the offenses charged in this case are alleged to have been committed at Tulsa, which is in the second division of the old Eastern District. It, therefore, follows, under the ruling in *Case* v. *United States, supra*, that the trial of motions and demurrers in criminal cases arising before the passage of the Act of Congress of February 16, 1925, must be had in the division in which the offenses are alleged to have been committed, that the motions and demurrer in this case should have been ruled on in the second division of the old Eastern District at Tulsa and not at Muskogee, which is

outside of said division of said district. This was a jurisdictional matter and Judge KENNAMER had no more authority to rule on these questions at Muskogee than he would have had to rule on them at Little Rock, Arkansas, if he had been assigned to the Eastern District of Arkansas.

This division order also provided:

> "It is further ordered that unless and until otherwise ordered by the judge to whom the judicial work of the division in which any county is situated, the cases and issues arising in, or coming from, such county, shall be, and are hereby, assigned for hearing and trial, to the court town to which such county is heretofore in this order declared tributary."

It is provided in the earlier part of this division order that cases and issues arising in, or coming from, Tulsa County are tributary to the court at Tulsa, Oklahoma. The record in this case shows that no order was made by Judge KENNAMER or any other judge, assigning this case, or any issues arising therein, for trial at Ardmore, Oklahoma, or any place other than Tulsa, as provided in the division order. It follows, therefore, under the authority of *Case* v. *United States*, that the rulings on the motions and demurrer and the trial of the case should have been had *at Tulsa*, in the second division of the old Eastern District of Oklahoma, whereas, in fact, it is conclusively shown in the record that the motions and the demurrer were ruled on by Judge KENNAMER *at Muskogee*, entirely outside of the second division of the old Eastern District, and the trial of the case on its merits was had *at Ardmore, Oklahoma, instead of Tulsa, Oklahoma*. The division order of Judge SANBORN, ratified and approved by Congress in the Act of February 16, 1925, having definitely fixed *the place* for exercising these functions by the court having juris-

diction to act, and this court having held, in *Case* v. *United States* that this was jurisdictional, it follows that the rulings of Judge KENNAMER *on the motions and demurrer at Muskogee* and the conviction of the plaintiffs in error before Judge POLLOCK *at Ardmore*, were without authority and null and void.

III.

The court, in its opinion, has failed to make the proper application of the Sixth Amendment to the Constitution of the United States, section 59 of the Judicial Code, and the provisions of the Act of February 16, 1925, to the uncontroverted facts actually existing and shown in the record. The court, in its opinion, says:

> "There were originally two judicial districts in the State of Oklahoma—the Eastern and Western. The judges of the Eastern District were the Hon. R. L. WILLIAMS and the Hon. F. E. KENNAMER. * * * An Act of Congress approved February 16, 1925, created three independent districts in the State of Oklahoma, designated as the Eastern, Western and Northern. The said newly created Northern District comprises ten counties which were formerly a part of the old Eastern District and two counties which were formerly a part of the old Western District. The new Eastern District comprises the remaining counties of the old Eastern District and the new Western District comprises the remaining counties of the old Western District."

It is uncontroverted that the plaintiffs in error were indicted in the court of the *new Eastern District* by a grand jury drawn and impaneled exclusively from the territory now embraced in the *new Eastern District* and they were tried and convicted in the court of the *new Eastern District*, before a petit jury drawn and impaneled exclusively from the

territory now embraced within the *new Eastern District.* By affirming the conviction in this case, this court holds: That the new Eastern District is the same identical district as the old Eastern District, although the territory embraced therein does not include ten counties, of which Tulsa County is one, which are included in the old Eastern District. By the same token, this court holds that the court for the new Eastern District is the same identical court as the court for the old Eastern District, although the court for the new Eastern District has one judge and no divisions, whereas, the court for the old Eastern District has two judges, two divisions and may sit at places outside the territorial jurisdiction of the court for the new Eastern District, and where the court for the new Eastern District cannot exercise its functions. By the same token, it holds that the court for the new Eastern District, which indicted and tried the plaintiffs in error, was without power or authority to summon grand or petit jurors from ten counties, including Tulsa County, where the offense was committed, which were a part of the vicinage from which the plaintiffs in error were entitled to have both grand and petit jurors drawn, if the court should determine that the drawing from those counties would be most favorable to an impartial trial and would not incur an unnecessary expense or unduly burden the citizens with such service.

This holding of the court is violative of the uncontroverted facts and the admitted law. The new Eastern District does not have the same identity as the old Eastern District, and the two are not the same in fact. The identity of a judicial district is determined solely and alone by its territorial boundaries and one judicial district differs from any other judicial district solely in its territorial confines. There can be no other difference between different judicial districts. The

new Eastern District has within its territorial boundaries thirty counties. The old Eastern District has within its territorial boundaries forty counties. The fact that the two districts have thirty counties in common cannot, in the very nature of things, make them the same district, or give them the same identity. Especially is this true when they are considered in reference to jurisdiction over an offense committed in a county which is within the territorial boundaries of one district, but is without the territorial boundaries of the other district.

The fact that the new Eastern District and the old Eastern District are designated and referred to in the Act of February 16, 1925, as the Eastern District, has given rise to some confusion, although the language of the act itself very plainly shows that Congress had in mind the separate identity of the two districts and their courts and specifically preserved their separate identity in the act itself. That act provides:

> "*Sec. 2.* The present Senior Judge of the Eastern District of Oklahoma be, and he is hereby, assigned to hold said court in the said Eastern District and shall exercise the same jurisdiction and perform the same duties within the *said* district, as he exercised and performed within *his* district prior to the passage of this act. That the present judge of the Western District of Oklahoma be, and he is hereby assigned to hold said court in the Western District of Oklahoma, and shall exercise the same jurisdiction and perform the same duties as he exercised and performed within *his* district prior to the passage of this act. That the present Junior Judge of the Eastern District of Oklahoma be, and he is hereby, assigned to hold said court in the said Northern District, and shall exercise the same jurisdiction and perform the same duties within the *said* district as he exercised and performed within *his* district prior to the passage of this

act. Each of said judges and courts shall in all other respects have all the power and authority, civil, criminal, equitable or otherwise, which is conferred by law generally upon the District Courts of the United States and the judges thereof.";

and,

"*Sec. 5.* The jurisdiction and authority of the courts and officers of the Western District of Oklahoma and of the courts and officers of the Eastern District of Oklahoma as heretofore divided between them by the order of the senior judge of the Circuit Court of Appeals for the Eighth Circuit of the United States over the territory embraced within the said Northern District of Oklahoma, shall continue as heretofore until the organization of the District Court of said Northern District, *and thereupon shall cease and determine,* save and except insofar as the authority of the junior judge of said Eastern District is continued in him as judge of said Northern District and save and except as to the authority expressly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District and save and except as to any other authority expressly reserved to them or any of them, under any law applicable in the case of the creation or change of the divisions or districts of District Courts of the United States."

The use of different words qualifying "District" in section 2 above quoted and the provision in section 5 above quoted providing for the cessation and termination of the jurisdiction and authority of the old courts and their officers upon the organization of the court for the Northern District, except to commence and proceed with the prosecution of crimes and offenses committed prior to the establishment of said Northern District, clearly recognizes the separate identity of the new Eastern District and the old Eastern Dis-

trict and the separate identity of the court for the old Eastern District and the court for the new Eastern District. This can be made to clearly stand out to the mind through an appeal to the sense of sight, by using the word "Southern" to designate the new Eastern District in the act wherever the word "Eastern" is used to designate the new Eastern District. Thus substituted, these provisions of the Act of February 16, 1925, would read as follows:

"*Section 1.* The State of Oklahoma is divided into three judicial districts, to be known as the Northern, Southern and Western Districts of Oklahoma. The territory embraced on January 1st, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington as they existed on said date shall constitute the Northern District of Oklahoma. Terms of the United States District Court for the Northern District of Oklahoma shall be held at Tulsa on the first Monday in January; at Vinita on the first Monday in March; at Pawhuska on the first Monday in May and at Bartlesville on the first Monday in June each year; provided that suitable rooms and accommodations for holding court at Pawhuska and Bartlesville are furnished free of expense to the United States.

"The Southern District of Oklahoma shall include the territory embraced on January 1st, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah and Wagoner. Terms of the District Court for the Southern District shall be held at Muskogee on the first Monday in January; at Ada on the first Monday in March; at Okmulgee on the first Monday in April; at Hugo on the second Monday in May; at South McAlester on the first Monday in June; at Ardmore on the first

Monday in October; at Chickasha on the first Monday in November; at Poteau on the first Monday in December each year and annually at Pauls Valley at such times as may be fixed by the judge of the Southern District; provided that suitable rooms and accommodations for holding said court at Hugo, Poteau, Ada, Okmulgee and Pauls Vallley are furnished free of expense to the United States.

"The Western District of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward. The terms of the District Court for the Western District shall be held at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Mangum on the first Monday in April; at Enid on the first Monday in June; at Lawton on the first Monday in September, and at Woodward on the first Monday in November in each year, provided, that suitable rooms and accommodations for holding court at Mangum and Woodward are furnished free of expense to the United States. The clerk of the District Court for the Northern District shall keep his office at Tulsa. The clerk of the District Court for the Southern District shall keep his office at Muskogee and shall maintain an office in charge of a deputy at Ardmore. The clerk for the Western District shall keep his office at Guthrie and shall maintain an office in charge of himself or his deputy at Oklahoma City."

"*Section 2.* The present senior judge of the Eastern District of Oklahoma be, and he is hereby assigned to hold said court in the said Southern District and shall exercise the same jurisdiction and perform the same duties within the said Southern District as he exercised

and performed within his district prior to the passage of this act. That the present judge of the Western District of Oklahoma be, and he is hereby assigned, to hold said court in the Western District of Oklahoma, and shall exercise the same jurisdiction and perform the same duties as he exercised and performed within his district prior to the passage of this act. That the present junior judge of the Eastern District of Oklahoma be, and he is hereby assigned, to hold said court in the said Northern District, and shall exercise the same jurisdiction and perform the same duties within said District as he exercised and performed within his district prior to the passage of this act. Each of said judges and courts shall in other respects have all the power and authority, civil, criminal, equitable or otherwise, which is conferred by law generally upon the District Courts of the United States and the judges thereof."

Under section 1 of the Act, Congress created the three new and independent judicial districts without reference to the previously existing districts and designated the territorial boundaries of each, fixed the times and places for holding regular terms of the court of each district and prescribed the places at which the clerk of each district should keep his office. This is an original creation by legislative enactment of three new and independent judicial districts and the courts therefor. It is not a recognition of the previous existence and future continuation of any old districts or courts. It is not a transfer of territory from a previously existing district to another previously existing district or to a new district.

Section 2 of the act provides a judge for each new district created by the act by assigning Judge WILLIAMS to the new Eastern District, Judge KENNAMER to the new Northern District and Judge COTTERAL to the new Western District and provides that each of said judges so assigned shall exercise

the same jurisdiction and perform the same duties in the new district to which he is assigned as he exercised and performed in the old district of which he was judge prior to the passage of the act, and that each of said judges and courts should, in all other respects, have all of the power and authority, civil, criminal, equitable or otherwise which is conferred by law generally upon the District Courts of the United States and the judges thereof.

Having fully and completely created the three new and independent districts and provided a judge for each district, fixed the times and places for holding the regular terms of court of each district and the places where the clerks of the courts should keep their offices and fixed and prescribed the jurisdiction and authority of each court and judge thereof, the act then proceeds in section 5 to deal with the jurisdiction and authority of the old courts and their officers and provides that the jurisdiction and authority of the courts and officers of the Eastern District as theretofore divided between them by an order of the Senior Judge of the Circuit Court of Appeals for the Eighth Circuit over the territory embraced within the Northern District should continue as theretofore until the organization of the court for the Northern District, but thereupon, should cease and determine, save and except as to the authority expressly conferred by law on said courts, judges or officers or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District. The jurisdiction and authority of the old courts and their officers in all other respects had been terminated and destroyed by the creation of the new districts and the new courts thereof. As to past offenses, the old courts and the old districts were preserved by section 5 of the act, with the

same powers and jurisdictions and with the same territorial boundaries as existed before the act was passed. The preservation of the old districts and the reservation of the jurisdiction of the old courts has always been regarded as *necessary*, in view of the Sixth Amendment, to the legal prosecution for offenses committed prior to the change. Before section 59 of the Judicial Code was adopted, each act changing the courts and districts contained a provision preserving the old districts and the jurisdiction of the old courts as to past offenses, and it was to avoid the necessity of incorporating such a provision in each act that caused Congress to enact section 59 of the Code.

The court for the new Eastern District is not the same court as that of the old Eastern District. Not only is this so in the very nature of things, but the separate identity and existence of the courts for the two districts is specifically preserved and provided for in section 5 of the Act of February 16, 1925. The court for the new Eastern District has but one judge and no divisions and may sit at places and at times in regular terms where and when the court for the old Eastern District cannot sit. The court for the old Eastern District has two judges, two divisions and may sit at places and at times in regular term where and when the court for the new Eastern District cannot sit. The court for the new Eastern District exercises jurisdiction over thirty counties and continues into the future from the date of its creation until destroyed by subsequent legislation. The court for the old Eastern District exercises jurisdiction over forty counties and does not continue into the future as theretofore for any purpose save and except over the territory embraced in the ten counties now in the Northern District for all purposes until the organization of the court for the North-

ern District and thereafter, only as to offenses committed prior to the taking effect of the Act of February 16, 1925, and that limited and restricted jurisdiction will cease and terminate when all necessity for its existence in commencing and proceeding with the prosecution of crimes and offenses committed prior to the taking effect of the Act of February 16, 1925, has passed. It may sit and exercise jurisdiction over ten counties over which the court for the new Eastern District has no jurisdiction.

It seems to us that this question of the identity of the districts and the identity of the courts thereof is not open to controversy. It is so plain that it must necessarily force conviction to the mind of all that the districts are not the same and that the courts are separate and distinct tribunals.

The word "court," as a mental conception, has been defined by the Supreme Court of the United States in the case of *Todd* v. *United States*, 158 U. S. 278, 39 L. ed. 982, as follows:

> "A court is not a judge, nor a judge a court. A judge is a public officer who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power by the proper officer or officers at a time and place appointed by law."

The United States District Court for the Southern Division of the Northern District of Alabama in the case of *In re Steele*, 156 Fed. 853, in discussing the meaning of the term, said:

> "The word 'court' originally meant only a yard, palace or garden and according to Cowell it meant 'the house were the King remained with his retinue; also a place where justice was administered.' Anderson's Law Dictionary. So, in early history, the court meant the

place where the King was domiciled because the King was actually the fountain and dispenser of justice. The earlier courts were merely assemblages in the court yard of the baron or of the King himself, by those whose duty it was to appear at stated times or upon summons. This idea of the place predominating as the designation of a court caused Blackstone to adopt Coke's definition that 'a court is a place where justice is judicially administered.' 3 Blackstone's Commentaries 24. Indeed, the Supreme Court of Alabama in *Ex parte Branch & Company*, 63 Alabama 384, adopted the definition that a court is 'a place where justice is judicially administered.' This definition has been held to be too narrow and the definition given by a majority of judicial decisions is: 'a court is a tribunal duly constituted and present at the time and place fixed by law for judicial investigation and determination of controversy.' 2 Century Dictionary, p. 1312; 8 A. and E. Enc. of Law, page 22."

For other authorities, see *United States* v. *Clark*, 25 Fed. Cases 441, Case No. 14804; *In re Terrell*, 52 Kan. 29, 39 Am. St. Rep. 327; *State* v. *La Blonde*, (Ohio) 140 N. E. 510; *Belford* v. *State*, (Ark.) 139 S. W. 953.

It seems from these authorities that the term court includes as a dominant element, the idea of place. That it is more than the judge who presides. It is a separate and distinct entity from the territory over which it may exercise its functions. It is an incorporeal thing—a tribunal—and includes the judge, the clerk or other proper officers, and the place and time authorized by law for the exercise of judicial functions.

We confess that we cannot comprehend the meaning of this court where it says in its opinion:

"A practical interpretation of the Act of Congress contemplated the continuance of the Eastern District of

Oklahoma, not as a stranger to the former district, but with new boundaries after the analogy of the transfer of a county or counties from districts in other cases."

The new Eastern District is the same as the old Eastern District, or it is not. They cannot be identical and at the same time separate and distinct. The fact that the new district is not a stranger to the old district is no argument that it has the same identity, and we submit that the court's analogy of the transfer of a county or counties from a pre-existing district does not strengthen or fortify the court's holding that the two districts are the same and that the courts thereof are identical, because there is an unbroken line of decisions, including *Lewis* v. *United States*, 14 Fed. (2nd Series) 369, which hold that where a county, or counties, are transferred from a pre-existing district to another pre-existing district or to a new district, the identity of the old district and the identity of the old District Court is preserved for the purpose of commencing and proceeding with the prosecution of crimes and offenses committed before the change.

—*United States* v. *Hackett*, 29 Fed. 848;
United States v. *Benson*, 31 Fed. 896;
Lewis v. *United States*, 14 Fed. (2nd Series) 369.

Prior to August 5, 1886, the State of California constituted one judicial district known as the District of California. On the above date, Congress divided California into two districts, one known as the Southern District of California and the other known as the Northern District of California. The act provided that:

"All offenses heretofore committed in the District of California, shall be prosecuted, tried and determined in the same manner and to all intents and purposes as if this act had not been passed."

After the Act of Congress took effect, the Government continued to indict and prosecute offenders in the court for the District of California for offenses committed prior to the 5th day of August, 1886. Offenses committed after August 5, 1886, were prosecuted in the court for the Southern District of California, or the court for the Northern District of California, depending upon the district in which the offense was committed, but as to offenses committed prior to August 5, 1886, the court for the old District of California was treated as if in existence and prosecutions had therein, summoning grand and petit juries from the entire territorial body of the old District of California.

In *United States* v. *Hackett*, 29 Fed. 848, the defendant was indicted in the court for the old District of California by a grand jury of that district for an offense committed prior to August 5, 1886, and the defendant was being prosecuted on said indictment in the court of the old District of California. The court, in that case, speaking through Judge Hoffman, held that the old District of California and the court thereof continued to exist after the re-districting act was passed and that offenses committed prior thereto could be prosecuted in the court for the old district, saying:

> "For the purpose of trying offenders who had been indicted or whose offenses had been committed before the passage of the act, it was *necessary* to keep alive the District Court of the District of California (the same observation applies to the Circuit Court) in order that a court might be organized and be in existence competent to call a jury from the body of the district where the crime was committed."

And,

> "Inasmuch as every offender has a right to be tried by a jury of the district in which the crime was commit-

ted, which district shall previously have been ascertained by law, it is plain that a jury of the Northern District could not try an offender who has committed a crime while the district comprised the whole state; neither could a jury of the Southern District try him."

And,

"The result is that the District Court for the District of California and the Circuit Court for the District of California may continue to sit and summon jurors from the whole district for the purpose of trying those offenders. We are, therefore, of the opinion that the course adopted, though anomalous and open to some inconvenience, is the only course to be adopted unless we are willing to say that all indictments pending in either court and all offenses committed before the passage of the act, must, the one be discontinued and fail for want of jurisdiction and the other fail because the act secures the impunity of offenders."

In *United States* v. *Benson*, 31 Fed. 896, the same doctrine is laid down in an opinion by Circuit Judge FIELD concurred in by Circuit Judge SAWYER and District Judge HOFFMAN. These two cases are cited and approved by this court in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369.

There is no case to be found in the authorities holding that a prosecution can be commenced or proceeded with in the court of a district as it existed after a county in which the offense was committed has been transferred to another district. The only case that even tends in that direction is *United States* v. *Peuschel*, 116 Fed. 642, but an examination of that case discloses that three counties were detached from the Northern District of California, which was a previously existing district, and attached to the Southern District of California, which was also a previously existing district. The offense in that case was not committed in the transferred territory,

but was committed in the counties of Kern and Tulare, which were a part of the Southern District of California, both before and after the transfer of the counties of Inyo, Mariposa and Merced from the Northern District to the Southern District of California. The prosecution in that case was in the court for the Southern District of California and that court had power and jurisdiction to summon jurors from the uttermost limits of the Southern District of California as it existed at the time the offense was committed and the court held that its jurisdiction to try the defendant for an offense committed in Kern and Tulare counties was not affected by the fact that thereafter the counties of Inyo, Mariposa and Merced were transferred to the Southern District from the Northern District.

Under the Act of Congress of May 29, 1900, construed in the *Peuschel* case, *supra*, the Northern and Southern Districts of California were continued in existence indefinitely. The only change the act made, or purported to make, in the two districts was to take from the Northern and add to the Southern District an inconsiderable amount of territory, leaving both districts the same in all other respects and it is said in the *Peuschel* case that:

> "The fact that said provision was not so extended shows conclusively that in the opinion of Congress, the transfer of the three counties from one district to the other could not affect prosecutions for offenses theretofore committed, *except such as were committed in the transferred counties.*"

There is a very marked distinction between a case where the offense was committed in transferred territory and a case where the offense was committed in territory not transferred and there is also a marked distinction between a case

where the prosecution is in the court of the district to which the transferred territory has been added and a case where the prosecution is in a court of the district from which the transferred territory has been taken. To illustrate, we will draw the distinction with reference to the facts in the *Peuschel case*. There the offense was committed in a county not transferred, but which was in the Southern District of California, before the Act of May 29, 1900, was passed and was in said district after said act was passed. The Southern District of California, after the act was passed, contained all of the territory of the old Southern District, plus three counties transferred to it from the old Northern District. The court of the Southern District, therefore, after the passage of the act, had jurisdiction over all of the territory in the old Southern District and could summon both grand and petit jurors from any and every part of the territory of the old Southern District. If the offense had been committed in one of the transferred counties, the court of the new Southern District would not have had power or jurisdiction to summon jurors from every part of the district in which that county was situated at the time the offense was committed. Nor would the court for the new Northern District of California have jurisdiction to summon jurors from every part of the old Northern District, because three of the counties, including the one in which the offense was committed, would then be outside of the territorial jurisdiction of the court for the new Northern District. It would have been necessary, then, as provided in the Act of May 20, 1900, to preserve the old Northern District and the court thereof for the trial of offenses committed in the transferred territory prior to the change because that would be the only way in which there could be preserved a court organized and with power and

jurisdiction to summon jurors from every part of the old Northern District, and, as said in the *Peuschel* case, under such circumstances, prosecutions for offenses committed prior to the change would be affected. They would be controlled by the provision of the act reserving jurisdiction in the court of the old Northern District.

In the instant case, if the analogy of the court is applied, the offense was committed in Tulsa County, which is within the jurisdiction of the court of the old Eastern District and not within the jurisdiction of the court of the new Eastern District, but is now within the jurisdiction of the court of the Northern District, and, under the authority of the *Peuschel* case, *supra*, the offense having been committed in the transferred territory, the jurisdiction of the court for the new Eastern District would be affected by the transfer, and jurisdiction to indict and try the plaintiffs in error for the offenses charged would inhere in the court of the old Eastern District and not elsewhere and the court for the new Eastern District would have no jurisdiction to commence or proceed with the prosecution of the plaintiffs in error for the offenses charged.

Section 2 of article 3 of the Constitution of the United States, provides:

> "The trial of all crimes, except in cases of impeachment, shall be by a jury; and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

Under this provision, the only restriction as to the place of trial when committed in a state was that the trial should be held within the state. This was not a sufficient protec-

tion to the citizen, according to the view of many of the framers of the constitution, nor a sufficient designation of the vicinage from which juries should be drawn to indict and try citizens for crimes committed. It was contended that after a crime was committed, Congress might, for political, or other reasons, change or alter federal judicial districts and thus restrict or extend the vicinage from which grand and petit juries might be drawn for the trial of such offenses and thus endanger the cherished right of trial by jury, at the place where the crime was committed and before a jury of the immediate vicinage. So, shortly after the adoption of the Constitution, the Sixth Amendment was submitted and adopted. It provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state *and district* wherein the crime shall have been committed, which district shall have been previously ascertained by law."

This was one of those great provisions of personal right which were exacted by the American people as a condition to the adoption of the constitution itself. It was proposed to the legislatures of the several states by the first Congress on the 25th day of September, 1789, and was ratified by a sufficient number of states in that year and in the years immediately following.

The language "which district shall have been previously ascertained by law" means that the district must have been ascertained by law prior to the commission of the offense.

—*United States* v. *Maxon*, 5 Blatchford 360, 26 Fed. Cases 1220, Case No. 15748;

United States v. *Dawson*, 15 Howard 468, 14 L. ed. 775;

Cook v. *United States*, 138 U. S. 157, 34 L. ed. 906; *United States* v. *Greene*, 146 Fed. 776.

The Circuit Court for the Eastern District of New York in the *Maxon* case said:

> "The argument in support of the jurisdiction is, that if the district is ascertained by law before the trial, the amendment is sufficiently complied with. We think that this interpretation is not in accordance with the fair import of the terms of the provision; nor would it meet the grievance it was intended to remedy, *namely*, the formation of a district after the offense was committed, to suit the will or caprice of the lawmaking power. According to the very words of the amendment, there must be a speedy trial by an impartial jury of the state and district in which the crime was committed, which district (the one in which it was committed), shall have been previously ascertained by law, that is, *previous to the commission of the offense.*"

The decision in that case came on a motion to quash an indictment against John Maxon for grand larceny alleged to have been committed on the 31st day of December, 1883, in the Navy Yards at Brooklyn, New York. At that time, the Navy Yards were within the Southern District of New York. By an Act of February 25, 1885, 13 Stat. 468, the Eastern District of New York was established and such Navy Yard fell within its territorial limits and jurisdiction. The indictment was subsequently found in the District Court for the Eastern District and was transmitted to the Circuit Court for the Eastern District. The Circuit Court sustained the motion to quash and dismissed the indictment.

The Supreme Court of the United States in *Cook* v. *United States*, *supra*, had under consideration the effect of the provisions of the Sixth Amendment to the Constitution

on the question of venue, where the offense was committed in a territory of the United States, but not within the limits of any state, and the Supreme Court in that case said:

> "In respect to that clause of the Sixth Amendment declaring that the district shall have been previously ascertained by law, it need only be said that if those words import immunity from prosecution where the district is not ascertained by law before the commission of the offense, or that the accused can only be tried in the district in which the offense was committed (the district having been established when the offense was committed), the amendment has reference only to offenses against the United States committed within a state. *United States* v. *Dawson*, 56 U. S., 15 Howard 467, 487, 488 (14: 775, 783); *Jones* v. *United States*, 137 U. S. 202, 211, 212 (34: 691, 695). The second section of Art. 3 has provided, in respect to crimes committed in the states, that the trial by a jury should be had within the state where the crime was committed. The Sixth Amendment added the further guarantee in respect to the place of trial, that the district should have been previously ascertained by law, leaving the trial of offenses not committed within any state to be controlled by the second section of article 3."

The Supreme Court in the *Cook* case, in quoting from *United States* v. *Jackalow*, 56 U. S. 485, 17 L. ed. 225, said that:

> "So, in *United States* v. *Jackalow*, 66 U. S., 1 Black, 484, 486 (17: 225, 226); 'the crimes committed against the laws of the United States out of the limits of a state are not local, but may be tried at such place as Congress shall designate by law; but are local if committed within the state. They must then be tried in the district in which the offense was committed'."

In *United States* v. *Greene*, *supra*, the United States District Court for the Eastern Division of the Southern District

of Georgia, in construing the Sixth Amendment to the Constitution, said:

> "The term, 'previously ascertained by law,' necessarily imports previously to the commission of the crime, or at least to the accusation. Now, it will not be disputed that the offense charged against the prisoners, if offense it be, was committed before the creation of the Southwestern Division of the Southern District of Georgia, with provision for court at Valdosta. At that time, the Eastern Division of the district comprehended the counties from which the grand jurors who found the indictments under consideration were drawn. The district, as it then stood was, therefore, the district as it had been previously ascertained by law. It follows that since a large number of counties have been, subsequently to the alleged commission of the offense, withdrawn from the Eastern Division and comprehended in the Southwestern Division, the Eastern Division now at this time is not as it had been previously ascertained by law. It follows that this principle of our organic law, which is over and above all other laws, obliges the court to try the defendants in the district as it stood at the time the offense is alleged to have been committed. The obvious intention of the framers of the constitution was to create a vicinage for the court from which jurors must be drawn. The vicinage was the late Eastern Division of the Southern District of Georgia, but that vicinage had been impaired as we have seen, by an Act of Congress. Acts of Congress cannot impair the constitution or its effect. It follows, therefore, that as to these prisoners, the vicinage in which they are to be tried is the Eastern Division of the Southern District of Georgia, as it had been previously ascertained at the time the offense is alleged to have been committed."

In *United States* v. *Dawson*, *supra*, the defendant was indicted in the Circuit Court of the United States for the District of Arkansas for the murder of one Seaborn Hill, in the Indian

country west of the State of Arkansas. After the offense was committed and after the indictment was returned, but before the trial thereof, the State of Arkansas was divided by Congress into two districts, known as the Eastern District and the Western District of Arkansas. The Western District included nine of the western counties of Arkansas and the Indian country lying west of the state. The rest of the State of Arkansas constituted the Eastern District. The contention was made in that case that the United States court for the Eastern District of Arkansas had no jurisdiction because the offense was not committed in the Eastern District of Arkansas, but was committed in what, at the time of the trial, was the Western District of Arkansas, and at the time of the commission of the offense and returning of the indictment was the District of Arkansas. There were two opinions in the case, a majority opinion by Justice NELSON, and a dissenting opinion by Justice MCLEAN. The Supreme Court, in the majority opinion, held that the Sixth Amendment to the Constitution did not apply, because the offense was not committed *within the State of Arkansas*, but in the Indian country outside of the State of Arkansas and that the place of trial was ruled by section 2 of article 3 of the Constitution, but in discussing the matter, said:

> "It has been supposed that a provision in the Sixth Amendment of the Constitution of the United States has a bearing upon this question, which provides that 'in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.' The argument is, that since the erection of the new district out of the nine western counties in the state, together with the Indian country, it is not

competent for the Circuit Court, in view of this amendment, to try the prisoners within the remaining portion of the old district, inasmuch as that amendment requires the district within which the offense is committed and the trial is to be had, must be ascertained and fixed previous to the commission of the offense. But it will be seen from the words of this amendment that it applies only to the case of offenses committed within the limits of a state; and whatever might be our conclusion, if this offense had been committed within the State of Arkansas, it is sufficient here to say, so far as it respects the objection, that the offense was committed out of its limit and within the Indian country."

Justice McLean, in his dissenting opinion, contended that even where the offense was committed without the limits of the state, the indictment and trial must be had in the district as it existed at the time the offense was committed. He said:

"As the state and district are connected by the copulative conjunction in this provision, the case before us is not technically within it. The crime is alleged to have been committed within the Indian country, which the district includes, but it is not within the state. But the case appears to me to be within the policy of the provision. Nine counties of the State of Arkansas are within the district and from which the jury to try the defendant might be summoned. This brings the case substantially within the above provision. *Had the place of the murder been within one of the above counties, the constitutional provisions must have governed the case.*"

And further on in the dissenting opinion, Judge McLean says:

"If tried in the Eastern District, the jury must have been summoned from that district and not from the district in which the offense was committed. The considerations in favor of the Western District as the legal

place of trial greatly outweigh, it seems to me, any that can arise in favor of the Eastern District."

In the case at bar, the offense is alleged to have been committed in Tulsa County in the State of Oklahoma. At the time of the commission of the offense, Tulsa County was in the second division of the old Eastern District. At the time the indictment was returned in the court for the new Eastern District at Muskogee, Oklahoma, Tulsa County was not within the territorial boundaries of the new Eastern District, but was within the territorial boundaries of the new Northern District of Oklahoma. Under the authorities cited, it seems most clear that indictment in this case must be found, and the trial had, in the court of the old Eastern District, by a grand jury and a petit jury of that district, as it was constituted and existed at the time the offense is alleged to have been committed. *This was not done.* The indictment was returned in the court for the *new Eastern District* of Oklahoma at Muskogee on June 23, 1925, by a grand jury drawn and impaneled exclusively from the territorial limits of the *new Eastern District, and it is conceded by the Government in this case that the court in which the indictment was returned and in which the trial was had, had no power, authority or jurisdiction to summon grand or petit jurors from the ten counties of the old Eastern District, which includes Tulsa County,* which, under the Act of February 16, 1925, are included in the Northern District of Oklahoma, and this court in *Lewis* v. *United States,* 14 Fed. (2nd Series) 369, said:

"If jurors from the counties transferred from the Eastern to the Northern District were to be selected, it would necessitate a writ of *venire facias* to the marshal for the Northern District for the marshal of the Eastern District has no power to execute it outside of his own

district. There is no statute authorizing jurors to be drawn for service out of the district of their residence."

If the plaintiffs in error had been indicted and tried in the court of the old Eastern District, as plainly required by the Sixth Amendment to the Constitution, section 59 of the Judicial Code, and the Act of Congress of February 16, 1925, the court would have had jurisdiction to summon both grand and petit jurors from the uttermost limits of the old Eastern District, including the ten counties referred to, and the marshal of the old Eastern District would have had power and authority to summon these jurors from every part of the territorial limits of the old Eastern District. This was specifically held in the case of *United States* v. *Hackett*, 29 Fed. 848, which is cited and approved by this court in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369, wherein the Circuit Court for the Northern District of California said:

> "The result is that the District Court for the District of California and the Circuit Court for the District of California may continue to sit and summon jurors from the whole district for the purpose of trying those offenders."

This must necessarily be true because it would otherwise be violative of the Sixth Amendment of the Constitution and also violative of section 59 of the Judicial Code which provides that, in such case, the prosecution must be commenced and proceeded with the same as if such new district had not been created or such county or territory had not been transferred, and it would also be violative of the provisions of the Act of Congress of February 16, 1925, which provides that the jurisdiction and authority of the courts and officers of the Eastern District of Oklahoma, as theretofore divided between

them by the order of the Senior Judge of the Circuit Court of Appeals of the United States for the Eighth Circuit, shall continue for the purpose of commencing and proceeding with the prosecution of crimes and offenses committed therein prior to the passage of the act.

The identity of the old Eastern District and the court thereof could easily have been preserved in all of the proceedings in this case by designating the court and the district as "The United States District Court for the Eastern District of Oklahoma as it existed immediately prior to the passage of the Act of February 16, 1925," and all process issued out of that court could have been served by the marshal of the old Eastern District in any part of that district, including the ten counties which are not now within the territorial limits of the new Eastern District. Every safeguard of the Constitution and the statutes would have been preserved for the defendants and the Government would not have been inconvenienced or hampered in the least in the prosecution, and both the letter and the spirit of the law would have been respected and fulfilled. As it is, the defendants have been indicted and tried in the court for the new Eastern District of Oklahoma, which has no power or authority or jurisdiction to summon grand or petit jurors from the ten counties in the immediate vicinity of the place where the offenses are alleged to have been committed. They were tried at Ardmore, Oklahoma, in the extreme southern part of the state, before a jury drawn and selected from the immediate vicinity of Ardmore, some two hundred miles from the place where the offense was committed.

The Supreme Court of the United States in *Coe* v. *The State of Minnesota*, 76 U. S. 35, 19 L. ed. 573, 9 Wall. 35-

38, in construing a provision of the Constitution of Minnesota which is in the identical language of the Sixth Amendment of the United States Constitution, except that the word "county" is used therein instead of the word "state," said:

> "Undoubtedly, the provision securing to the accused a public trial within the county or district in which the offense is committed, is of the highest importance. It prevents the possibility of sending him for trial to a remote district at a distance from friends, among strangers and perhaps parties animated by prejudices of a personal or partisan character."

We remind the court, in this connection, that in the verified motion to quash the indictment in this case (Rec. 83) and in the verified motion to quash the petit jury panel from which the jury was selected to try the plaintiffs in error at Ardmore (Rec. 131), it is alleged that during the last three years preceding, there had been many bank failures, both state and national, in the territorial jurisdiction of the new Eastern District and that a great number of citizens therein had sustained losses, either as depositors or stockholders, and that because of said bank failures and said losses there existed in the minds and consciences of many citizens in the counties from which the jury was drawn, a bias and prejudice against officers of banks and other individuals charged with violation of the state and national banking laws, and that the defendants believed, and charged, that many of the citizens whose names were in the jury box at the time said grand and petit juries were drawn, had sustained financial losses, either as depositors or stockholders in national or state banks and that by reason thereof, were biased and prejudiced against any person charged with violation of said national or state banking laws. *These facts were admitted by the Government's de-*

murrer to the motion to quash the petit jury panel, which the trial court sustained (Rec. 131, 134, 135); and we also call the court's attention, in this connection, to the fact that the *voir dire* examination of the jurors called for service in this case shows that this condition existed and that the defendants were forced to exercise all of their peremptory challenges to relieve the jury of jurors whose minds were tinged and colored adversely to the defendants because of these conditions and that the defendants were left even then with certain members of the trial jury who were laboring under the unfavorable influence of these conditions. (Rec. 140 to 210.)

It was the possibility, yea, the probability, of such things being done that caused Patrick Henry to say in his speech before the Virginia convention on the adoption of the Federal Constitution on June 14, 1788, referring to the Constitution before the first ten amendments thereto had been adopted, that:

> "That paper tells you that the trial of crimes shall be by jury and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty; a person accused may be carried from one extremity of the state to another and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the act, but, by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors and your own! I need not tell you that, by the common law, a number of hundreders were required on a jury and that afterwards, it was sufficient if the jury came from the same county. With less than this, the people of England have never been satisfied. That paper ought to have declared the common law in force."

It was this objection on the part of Henry and others to section 2 of article 3 of the Constitution which caused the submission and adoption of the Sixth Amendment.

Until recent years, there has been a tendency, as we all know, on the part of the courts to drift away from the limitations and restrictions of the Constitution, and especially the Bill of Rights, but we have felt that in recent years, the pendulum has begun to swing in the other direction, and we find the courts, especially the Circuit Court of Appeals for the Eighth Circuit and the Supreme Court of the United States, vitalizing, by judicial construction, the provisions of the Constitution adopted in the beginning for the protection and preservation of the sacred rights of the American citizen guaranteed in the Bill of Rights. The courts are now seeking the purposes and reasons for these provisions of the Constitution and giving force and effect to them as intended by our forefathers, who fixed them as the fundamental law of the land.

There is a recent decision of the United States Circuit Court of Appeals for the Fifth Circuit, written by Circuit Judge WALKER and concurred in by Circuit Judges BRYAN and FOSTER, which calls for consideration in this petition for rehearing. It is *Quinlan* v. *United States*, 22 Fed. (2nd Series) 95. It construes the Sixth Amendment to the Constitution and section 59 of the Judicial Code. In that case, the accused was indicted in the court for the Middle District of Georgia for an offense committed in Bibb County, Georgia, before the Middle District of Georgia was created. Prior to May 28, 1926, the State of Georgia was divided into two federal judicial districts known as the Northern and Southern Districts of Georgia. Bibb County was then in the Southern District of Georgia. On May 28, 1926, Congress divided the State of

Georgia into three judicial districts, known as the Northern, Middle and Southern Districts of Georgia. Under this act, Bibb County is in the Middle District of Georgia.

The offenses charged in the indictment were committed in Bibb County in the early part of the year 1925, at a time when Bibb County was in the Southern District of Georgia and the indictment was found and returned on the 4th day of April, 1927, in the court for the Middle District of Georgia, in which Bibb County was at that time located. It was contended in that case that the conviction which followed was invalid because violative of the Sixth Amendment of the Constitution and also violative of the provisions of section 59 of the Judicial Code. The Circuit Court of Appeals for the Fifth Circuit in that case, held that the conviction was valid and was not violative of the Sixth Amendment or section 59 of the Code. It holds that the language "which district shall have been previously ascertained by law" refers to the time of trial and that section 59 of the Code refers only to prosecution pending in the old court at the time of the change and does not affect past offenses for which no indictment had been returned, leaving the venue for them in the new district having jurisdiction at the time of the indictment over the place where the offense was committed. The court, in discussing the Sixth Amendment, said:

> "The above quoted provisions of the Sixth Amendment, added to the requirement of the second section of article 3 of the Constitution in respect to crimes committed in the states, that the trial by a jury should be had in the state where the crime was committed, the further guaranty in respect to the place of trial, that the district should have been previously ascertained by law. That provision contains no requirement as to the court in which the accused is to be tried, or as to the district in

which the charged crime was committed remaining in existence until the time of the trial, or as it was when the crime was committed. That provision is consistent with the accused being tried by a court which was created after the commission of the crime and with the place of the commission of the crime being, at the time of the trial of the accused, in a district having territorial boundaries different from those of the district wherein the crime was committed."

We do not believe that this case correctly construes the Sixth Amendment. But if it does, then the court for the Northern District of Oklahoma is the proper court and the Northern District the proper venue for the indictment and trial of the plaintiffs in error in the instant case, because the offense was committed in Tulsa County, which, at the time of the indictment and trial, was within the territorial jurisdiction of the court for the Northern District. The plaintiffs in error were neither indicted nor tried in said court within the territorial jurisdiction of the Northern District.

In the *Quinlan* case, the court said, in regard to the source of the power and jurisdiction to indict and try the accused in the Middle District of Georgia, that:

"As to criminal cases begun in the District Court for the Middle District of Georgia, the power of that court within the territory of that district was conferred by the provision: 'The District Courts shall have original jurisdiction as follows: * * * *(2)* of all crimes and offenses cognizable under the authority of the United States.' Judicial Code, section 24, Par. 2 (28 U. S. C. A., section 41[2]). That power is not restricted to crimes and offenses committed within the territory of the district after it was created."

We think the court in the *Quinlan* case has overlooked or disregarded the object of the Sixth Amendment and the

purposes and reasons which caused its submission and adoption. However, there is one thing to be said in favor of that construction and that is, under the holding of the court in the *Quinlan* case, the indictment and trial of an accused must be found and had in the court and district having jurisdiction, at the time of the indictment and trial, over the territory where the offense was committed.

The plaintiffs in error in the instant case have been indicted and tried in a court and district that did not have jurisdiction, at the time of the indictment or trial, over the territory where the offenses are alleged to have been committed, to-wit: Tulsa County.

The Supreme Court in *Salinger* v. *Loisel*, 265 U. S. 224, 68 L. ed. 989, 997, held that:

> "It must be conceded that under the Sixth Amendment to the Constitution, the accused cannot be tried in one district on an indictment showing that the offense was not committed in that district; and it also must be conceded that there is no authority for a removal to a district other than one in which the constitution permits the trial to be had."

In *United States* v. *Wood*, 28 Fed. Cases 755, Case No. 16757, there was involved the construction of the Act of Congress of April 20th, 1818, dividing the District of Pennsylvania into two districts, the Eastern and the Western Districts. Before the act was passed, a grand jury was drawn from the old District of Pennsylvania and was sworn and impaneled to inquire of offenses committed in the old District of Pennsylvania. The grand jury continued in session after the passage of the act dividing the district and thereafter found and returned an indictment against the defendant Wood. The offense was actually committed in the terri-

tory of the new Eastern District, but before its creation. The indictment alleged that it was committed in the District of Pennsylvania. The indictment was quashed because it did not allege the crime was committed in the Eastern District, and the court put its decision upon the ground that if the crime was committed in the Western District, the Eastern District had no jurisdiction but the Western court would have, and the indictment did not show on its face whether the offense was committed in what was then the Eastern District or the Western District. The court, in its opinion, said:

> "The second objection to the caption is that it states the presentment to be by the grand jury of the United States, inquiring for the District of Pennsylvania, when in truth there is no such district, and the jury had no power to inquire except for the Eastern District. The answer to this objection is that the caption is consistent with the truth of the case, and would, therefore, have been faulty had it been qualified as the prisoner's counsel has contended it ought to have been. The venire issued before the passage of the law in question to summon the grand jury for the District of Pennsylvania, and on the 11th of April, some days before the passage of this act into a law, they were sworn and affirmed to inquire for the body of the District of Pennsylvania. The indictment, therefore, is with strict propriety found by the grand inquest of the United States, inquiring for Pennsylvania District upon oath and affirmation, inasmuch as they were legally sworn and affirmed to inquire for the whole district. Nevertheless, there remains to be considered under this head a very interesting question, which is, does this indictment show that this court has jurisdiction of the offense charged to have been committed by the prisoner? This question resolves itself into two others. Although the grand jury were sworn and very properly to inquire for the District of Pennsylvania, yet could they, after the passage of this law, in-

quire of offenses committed on land out of the Eastern District of Pennsylvania? And, if they could not, then secondly, does the indictment sufficiently show that the offense of which the prisoner stands convicted was committed within the jurisdiction of the court? The court has not been able to find any act of Congress which in express terms fixes the jurisdiction of the Circuit Courts in criminal cases by the place in which the offense was committed. But the court is clearly of opinion, upon the fair and reasonable construction of the different laws upon this subject, that the jurisdiction of the Circuit Court in criminal cases is confined to offenses committed within the district for which those courts respectively sit, where they are committed on land. See the eleventh, twenty-third and twenty-ninth sections of the first judiciary act (1 Stat. 78, 85) and the third section of the act of the 2nd of March, 1793—2 Laws 225 (1 Stat. 333).

"It was contended by the district attorney that the jurisdiction of the Western District Court does not extend to criminal cases; but the court cannot give its assent to this construction of the law. The fourth section declares that that court, in addition to the ordinary jurisdiction of a District Court, shall, within the limits of the Western District, have jurisdiction of all causes, except appeals and writs of error, cognizable by law in a Circuit Court. Now, as it is clear that Circuit Court has jurisdiction of all offenses prohibited by the laws of the United States committed at sea or on land within the district where the court sits, it follows, from the general expressions above quoted, that the Western District Court has the cognizance of the offenses limited as to jurisdiction as the Circuit Courts are. If then, this court has not jurisdiction of offenses committed within the Western District, and the Western court has, the next question is, does this indictment sufficiently show that the offense of which the prisoner is convicted, was committed within the jurisdiction of this court? The allega-

tion in all the counts is that the offense was committed in the District of Pennsylvania. It might then have been committed as well in the Western as in the Eastern District, and the court cannot help the indictment in this respect by any presumptions, or because we know from the evidence that the offense was committed in this city. It is indispensable that the indictment should distinctly show that the court has jurisdiction of the offense and it ought, therefore, to have laid it to have been committed in the Eastern District."

It appears from the indictment in the instant case that the offense was committed in Tulsa County, which is in the territorial jurisdiction of the court for the Northern District of Oklahoma and is outside of the territorial jurisdiction of the court for the new Eastern District of Oklahoma.

In the *Woods* case, *supra*, the defendant was later indicted for the same offense in the Circuit Court for the Eastern District of Pennsylvania and there convicted. *United States* v. *Woods*, 28 Fed. Cases 754, Case No. 16756.

In *United States* v. *Maxon*, 26 Fed. Cases 1220, Case No. 15748. the defendant was indicted in the Circuit Court for the Eastern District of New York for an offense committed in the Southern District of New York before the Eastern District was established by the Act of February 25, 1865. The indictment was quashed because the Eastern District had not been ascertained by law previously to the commission of the offense and was, therefore, violative of the Sixth Amendment of the Constitution. Circuit Judge NELSON, in rendering the opinion, said:

"This question was somewhat discussed by counsel and court in *United States* v. *Dawson*, 15 Howard (56 U. S. 467), though the point was not necessarily involved. We think we hazard nothing in saying that the

above view of the amendment is in accordance with the general opinion of jurists, and the profession since its adoption and with the reasons that led to it."

In *United States* v. *Hackett*, 29 Fed. 848 and *United States* v. *Benson*, 31 Fed. 896, the Circuit Court for the District of California held that under the Act of August 5, 1886, dividing the State of California into two districts, known as the Northern and Southern Districts of California, the old district and the old court thereof were preserved and continued for the trial of past offenses the same as if the act had not been passed, and in the *Hackett* case, the court said:

> "It was necessary to keep alive the District Court of the District of California (the same observations applied to the Circuit Court) in order that a court might be organized and be in existence competent to call a jury from the body of the district where the crime was committed."

And,

> "The result is that the District Court for the District of California, and the Circuit Court for the District of California may continue to sit and summon jurors from the whole district for the purpose of trying those offenders. We are therefore of opinion that the course adopted, though anomalous and open to some inconvenience, is the only course to be adopted unless we are willing to say that all indictments pending in either court and all offenses committed before the passage of the act, must the one fail and be discontinued for want of jurisdiction and the other fail because the act secures the impunity of offenders."

We assert, therefore, that the court for the new Eastern District of Oklahoma cannot indict or try the plaintiffs in error for an offense committed in Tulsa County before the

passage of the Act of February 16, 1925, because: *(1)* Tulsa County is outside of the territorial jurisdiction of the court for the new Eastern District, and *(2)* the new Eastern District had not been ascertained by law at the time the offenses are alleged to have been committed.

We contend that the court for the Northern District of Oklahoma does not have jurisdiction to indict or try the plaintiffs in error for the offenses charged in the indictments to have been committed in Tulsa County, Oklahoma, before the passage of the Act of February 16, 1925, because: *(1)* the Northern District of Oklahoma had not been ascertained at the time the offenses are alleged to have been committed. However, if we lay aside and discard the reasons for the submission and adoption of the Sixth Amendment to the Constitution and look solely to the letter of the Sixth Amendment, a plausible argument can be made, as in the *Quinlan* case, that the court having jurisdiction over the place where the offense was committed at the time of the indictment and trial, is the proper court and proper venue for the prosecution.

The only theory that accords with both the letter and spirit of the Sixth Amendment is that the old Eastern District and the old court thereof is preserved and has exclusive jurisdiction to indict and try the plaintiffs in error for the offenses alleged to have been committed in this case, retaining full power and authority to summon and impanel grand juries and petit juries for the indictment and trial, from the uttermost limits of the old district, including the ten counties now in the Northern District of which Tulsa County is one, and with full power and authority to sit at Tulsa, now in the Northern District of Oklahoma, and to summon and

impanel the trial jury from the territorial limits of the second division of the old Eastern District. There is one thing that seems certain and conclusive to our minds and that is that the court for the new Eastern District cannot, under any theory of the law, be held to have jurisdiction in this case. The jurisdiction to indict and try in this case rests either in the old court of the old Eastern District or the court for the Northern District of Oklahoma.

The *Quinlan* case, *supra*, puts an entirely new construction on section 59 of the Judicial Code with reference to the meaning of "prosecutions" as used therein. It holds that that section refers only to prosecutions pending at the time of the change of the district and does not refer to offenses previously committed but not indicted. It bases this holding on the ruling of the Supreme Court in *Salinger* v. *Loisel*, 265 U. S. 224, 68 L. ed. 989, construing the word "prosecutions" as used in section 53 of the Judicial Code and also the same construction placed thereon by the Circuit Court of Appeals for the Eighth Circuit in *Biggerstaff* v. *United States*, 260 Fed. 926.

We quote at length from this decision at this point as follows:

> "It appears from the language of that section that, so far as it deals with the situation created by the establishment of a new district, the purpose was to make provision for such criminal and civil cases as, after the creation of the new district, properly could be begun in the District Court for that district. The provision as to civil cases, except as to the manner of transfer, is contained in the second sentence of the section. The language of that sentence unequivocally shows that the only cases it deals with in the event of the creation of a new district are civil actions pending at the time of the crea-

tion of such district. The language of the first sentence, so far as it deals with the matter of creating a new district, is consistent with it referring only to criminal cases pending when such district is created. The word 'prosecution' properly may be used to describe the proceedings after the indictment is found and returned. The connection in which the plural of that word is used in the first sentence of the section under consideration indicates that what was referred to was criminal cases pending at the time of the creation of the new district and then susceptible of being transferred. It has been authoritatively determined that the word 'prosecutions,' as used in section 53 of the Judicial Code (28 USCA, Par. 114) has the above indicated meaning. *Salinger* v. *Loisel*, 265 U. S. 224, 44 S. Ct. 519, 68 L. ed. 989; *Biggerstaff* v. *United States*, (C. C. A.) 260 F. 926.

"The provision of section 59, as to transfer of 'such prosecutions and actions' contained in its third sentence, indicates that the criminal cases referred to are those pending when the new district is created, with the result that the file of papers therein and all documents pertaining thereto are, at the time of the creation of the new district, outside thereof and susceptible of being transferred thereto. The enactment of some such provision as the above set out one as to criminal cases was necessary or appropriate as to cases pending when a new district is created, and was unnecessary as to cases thereafter brought. To say the least, it would be questionable whether, in the absence of a statute so providing, a court other than that for the new district would have or retain jurisdiction as to crimes committed in territory included in the new district. The provision was appropriate to enable such other court to proceed with cases pending in it when the new district was created, and which could not thereafter properly be begun in that court.

"As to criminal cases begun in the District Court for the Middle District of Georgia, the power of that court within the territory of that district was conferred

by the provision: 'The District Courts shall have original jurisdiction as follows: * * *. *Second.* Of all crimes and offenses cognizable under the authority of the United States.' Judicial Code, Chap. 24, Par. 2 (28 USCA, Chap. 41 (2)). That power is not restricted to crimes and offenses committed within the territory of the district after it was created. So far as section 59 of the Judicial Code is pertinent in the instant case, it provides as follows: 'Whenever any new district * * * has been or shall be established, * * * prosecutions for crimes and offenses committed within such district * * * shall be commenced and proceeded with the same as if such new district * * * had not been created, * * * unless the court, upon the application of the defendant, shall order the cause to be removed to the new district * * * for trial.'

"The provision for prosecutions being 'commenced and proceeded with the same as if such new district * * * had not been created, * * * unless,' etc., is similar to the provision of section 300 of the Judicial Code, (28 USCA, Chap 443; Comp. St., Chap. 1277): 'All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, amended, or repealed by this act, may be prosecuted and punished, or sued for and recovered, in the District Courts, in the same manner and with the same effect as if this act had not been passed.' That Code (section 289 (Comp. St., Chap. 1266)), abolished the Circuit Courts and conferred their jurisdiction on the District Courts. Section 300 referred both to cases brought in the Circuit Courts and cases not begun therein of which those courts had had exclusive jurisdiction. An effect of that provision was to enable the District Courts to proceed with cases pending in the Circuit Courts when the latter were abolished. As to criminal cases pending in the Circuit Courts when they were abolished, or of which those courts had exclusive jurisdiction, the provision of section 300 means that such cases may be dealt with by the District Courts as the

Circuit Courts could have dealt with them if those courts had remained in existence and retained their jurisdiction. Section 59 makes provision for criminal cases based on alleged crimes committed in territory detached from the district of the court in which those cases were brought. Section 300 makes provision for cases brought in abolished courts and for cases of which those courts had had exclusive jurisdiction.

"Considering the situations dealt with, it seems clear that in each instance, the requirement that the cases referred to be proceeded with as if the change effected by statute had not occurred was intended to foreclose the questions as to those cases remaining subject to be proceeded with, notwithstanding such change, and as to the court or courts in which they could be carried on to judgment. That the provision of section 59 as to prosecutions being begun and proceeded with as if the new district had not been created meant merely that jurisdiction of those cases was to be retained by the court in which they were begun, and not that the disposition to be made of those cases was to be entirely unaffected by the creation of the new district, is quite manifest, as that section itself provides for the transfer of such cases to the court for the new district, which, of course, could not have been done if that district had not been created. As section 59 deals with the situation created by transferring part of territory of an existing district to a newly created one, it well may be inferred that the language of the first sentence of that section, similar to that used in section 300, means that, as to criminal cases pending in the court of the old district when the new district is created, based on charges of crimes committed in the transferred territory, those cases may be proceeded with in the court in which they were instituted, the same as if the new district had not been created, though the places where the charged crimes were committed are no longer within the territorial jurisdiction of that court.

"An effect of the provision is to enable the court for the old district to retain jurisdiction of pending criminal cases which properly could not be begun in that court after the creation of the new district. We conclude that that provision does not refer to cases not begun until after a new district was created, and is without effect on the power of jurisdiction of the District Court of the Middle District of Georgia with respect to criminal cases begun therein, whether the crimes charged in those cases were committed before or after the creation of that district."

We do not agree with the reasoning of the court on this point and believe its conclusion is not supported by the cases of *Salinger* v. *Loisel, supra,* and *Biggerstaff* v. *United States, supra.* The language of section 53 of the Judicial Code there construed is:

"All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district."

The language of section 59, in so far as applicable here, is as follows:

"Whenever any new district or division has been, or shall be established, or any county or territory has been, or shall be, transferred from one district or division to another district or division prosecutions for crimes and offenses committed within such district, division, county or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial."

In section 53, it is said:

> "All prosecutions for crimes or offenses shall be had, etc."

Whereas, the language in section 59 is:

> "Prosecutions for crimes and offenses shall be commenced and proceeded with * * *."

There is a very marked distinction in the language used. The language in section 59 is more nearly like the language used in the Act of Congress of July 12, 1894, regarding the procedure in criminal causes in the District of Minnesota, wherein it is provided in section 1 that:

> "All criminal proceedings instituted for the trial of offenses against the laws of the United States arising in the District of Minnesota, shall be brought, had and prosecuted in the division or district in which such offenses were committed."

This language of the Act of July 12, 1894, was construed by the Supreme Court in *Post* v. *United States*, 161 U. S. 583, 40 L. ed. 816. In that case, the defendant was indicted on July 20, 1894, at St. Paul in the third division of the district, for an offense committed on February 3, 1894, at Duluth in the fifth division of the district. In other words, the defendant was indicted after the Act of July 12, 1894, took effect, in a division of the district wherein the offense had not been committed. The Supreme Court reversed the conviction, holding that the defendant could not be indicted in any division of the district except the one in which the offense was committed. The Supreme Court, in *Salinger* v. *Loisel*, *supra*, recognized this distinction in the language used in these two sections when it said:

"The appellant relies on *Post* v. *U. S.*, 161 U. S. 583, 40 L. ed. 816, 16 Supreme Court Reports 611, as making for the contrary conclusion, but it does not do so. The case turned on a special statute now superseded, declaring that 'all criminal proceedings' for offenses in the District of Minnesota 'shall be brought, had and prosecuted' in the division in which the same were committed. The difference between that special direction and the general one now before us is so marked that further comment is not required."

A petition for writ of *certiorari* has been presented to the Supreme Court in the *Quinlan* case, and will no doubt be acted on soon.

The language of the Act of February 16, 1925, reserving in the old courts of the old districts jurisdiction to prosecute for past offenses, is to all intents and purposes the same as the language of section 59 of the Judicial Code. The language of section 5 of the act is:

"The jurisdiction and authority of the courts and officers * * * of the Eastern District of Oklahoma as heretofore divided between them by the order of the Senior Judge of the Circuit Court of Appeals for the Eighth Circuit of the United States, over the territory embraced within said Northern District of Oklahoma, shall continue as heretofore until the organization of the District Court of said Northern District and thereupon shall cease and determine, save and except * * * as to the authority expressly conferred by law on said courts, judges or officers, or any of them, *to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District.*"

The language of section 59 of the Code is as follows:

"Whenever any new district or division has been, or shall be, established, or any county or territory has

been, or shall be, transferred from one district or division to another district or division, *prosecution for crimes and offenses committed within such district, division, county or territory prior to such transfer, shall be commenced and proceeded* with the same as if such new district or division had not been created or county, division or territory had not been transferred."

If section 59 of the Judicial Code is construed to refer to only pending prosecutions, then the Act of February 16, 1925, must be construed to refer to only pending prosecutions, and jurisdiction to indict for offenses committed prior to February 16, 1925, would vest thereafter in the court of the district wherein the offenses were committed under section 24 of the Judicial Code and also under section 2 of the Act of February 16, 1925, which provides:

"Each of said judges and courts shall, in all other respects, have all of the power and authority, civil, criminal, equitable or otherwise, which is conferred by law generally upon the District Courts of the United States and the judges thereof."

It is certainly true that the court for the new Eastern District could not acquire, under section 24 of the Judicial Code, jurisdiction or authority to indict for an offense committed in Tulsa County prior to February 16, 1925, because Tulsa County is outside of the territorial limits of that court's jurisdiction, and yet the indictment in this case was returned in the court for the new Eastern District on June 23, 1925, several months after the passage of the Act of February 16, 1925, and several months after the organization of the court for the Northern District of Oklahoma, which took place on April 1st, 1925. We ask the court to keep in mind the distinction between indictment for an offense and trial of the

accused for the offense on the indictment after it is returned, because this court in its opinion has, it seems to us, lightly cast aside the objections we have raised to the jurisdiction of the court for the new Eastern District to indict the plaintiffs in error, by saying:

> "Authority was conferred upon the District Court of the Eastern District—that district having had jurisdiction of the offense when committed—to try the case in the absence of application for such transfer. No such application was made."

The plaintiffs in error moved to quash the indictment in this cause because the court for the new Eastern District of Oklahoma, in which the indictment was returned, did not have jurisdiction over the offense. Later on in the progress of the proceeding, we objected to the jurisdiction of the court for the new Eastern District to try the accused on the indictment. We did not move to transfer to the Northern District because it has been our contention from the inception of this case that we were indicted in a court that did not have jurisdiction over the offense and were being brought to trial in a court that had no jurisdiction to try the accused. To make our contention as plain as possible, let's assume that the plaintiffs in error had been indicted in the Western District of Arkansas or in the Western District of Oklahoma, would the court say for a moment that the failure of the accused to move to transfer to the Northern District of Oklahoma, waived the lack of jurisdiction on the part of the court in which the indictment was returned and operated to vest in that court jurisdiction which it does not have under the statutes of the United States? Jurisdiction cannot be conferred by consent and if the court for the new Eastern District of Oklahoma did not have jurisdiction to indict for the

offenses charged in this case, that court could not acquire jurisdiction to try the offenses through the failure of the accused to ask for a transfer to the court that does have jurisdiction. On June 23, 1925, the court having jurisdiction to indict the plaintiffs in error was either the court for the old Eastern District or the court for the Northern District of Oklahoma, depending upon whether section 59 of the Judicial Code and section 5 of the Act of February 16, 1925, reserved jurisdiction in the court for the old district for only the prosecution of offenses already indicted in that court, or for both indictment and prosecution, where the offense was committed prior to February 16, 1925. Certainly, the court for the *new* Eastern District at that time did not have jurisdiction to indict or try the accused for the offense charged, and all the proceedings therein are null and void and that court could not acquire jurisdiction through the consent of the accused any more than the accused could, by consent, give jurisdiction to one of the United States courts of New York.

We ask the court to refer at this point to the insert maps found in the back of our reply brief in this case, where it will be seen that the Northern District does not contain fourteen counties of the second division of the old Eastern District but only includes five counties from that division. It does not contain sixteen counties of the first division of the old Eastern District, but only includes five counties of that division and it would have been impossible, if this case had been transferred to the Northern District, for us to have secured in the Northern District any jurors from the fourteen counties of the second division or the sixteen counties of the first division of the old Eastern District which were not included in the Northern District.

The accused were entitled to have the indictment returned against them in a court having jurisdiction to summon and impanel a grand jury from any and every part of the territory constituting the district at the time the offense was committed and they are entitled to a trial on the merits in a court having jurisdiction and power to summon a petit jury from any and every part of the district as it existed at the time the offense was committed. The provision of section 277 of the Judicial Code that the court may order a grand or petit jury returned from such parts of the district as the court may direct so as to be most favorable to an impartial trial and so as not to incur any unnecessary expense or unduly burden the citizens from any part of the district with such service, pre-supposes the existence in that court of jurisdiction and power to direct the drawing of the jury from *any* part of the district. The accused were indicted and tried in the court for the new Eastern District of Oklahoma and it is conceded by the Government, and held by this court in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369, that that court has no power to summon jurors from the ten counties including Tulsa, where the offenses are alleged to have been committed, which are not in the new Eastern District, but were in the old Eastern District. What would have been the situation if the court for the new Eastern District had determined as an uncontroverted fact that returning the grand jury or the petit jury in this case from Tulsa County, or any one of the other nine counties of the old Eastern District which are not in the new Eastern District, would be most favorable to an impartial trial and would not incur an unnecessary expense or unduly burden the citizens of that part of the district with such service? The accused would have been in a court and, in fact, were in a court which did not have the jurisdiction or power

to give them what they were entitled to under section 277 of the Judicial Code.

The court, in its opinion, says that:

> "The judge of the Eastern District before the passage of the Act of February 16, 1925, by general order, directed the names of jurors from the ten transferred counties to be removed from the jury boxes for the Eastern District, thereby, in effect, restricting the drawing of jurors to the counties remaining in the district."

This statement of the court is erroneous. No such order was ever made. The Government in its brief in this case concedes this when it says, on page 9:

> "Shortly after the passage of the act detaching the County of Tulsa from the Eastern District and prior to the drawing of the grand jury that indicted the defendants, Judge R. L. WILLIAMS, of the Eastern District, caused the names of all jurors residing in the ten detached counties to be withdrawn from the jury box of the Eastern District. This was a verbal order made to the clerk of the court in the presence of the United States attorney signing this brief and at his request, to the end that all grand and petit jurors should thereafter be summoned exclusively from the thirty remaining counties in the Eastern District."

As a matter of fact, the record does not show that any such verbal order was ever given. It merely shows from the testimony of the clerk that *there is no order of record directing the withdrawal from the jury box of the names from these ten counties*. The clerk testified that these names were withdrawn from the jury box in order to constitute a legal jury box *for the new Eastern District*.

An order of court must be entered of record to be valid and all orders not entered of record are extra-judicial and

void. 15 Corpus Juris 971; *Charleston Trust Company* v. *Todd*, (West Virginia) 131 S. E. 638; *State* v. *Marionneaux*, 45 So. 389; *Medlan* v. *Platte County*, 8 Mo. 235, 40 Am. Dec. 135.

In 15 Corpus Juris 971, it is said:

> "All orders of court not entered of record are extra-judicial and void."

In *Charleston Trust Company* v. *Todd, supra*, the Supreme Court of Appeals of West Virginia held that:

> "A court must speak by its records or not at all. To be effective, it must be a verity in itself."

In *Medlan* v. *Platte County, supra*, the Supreme Court of Missouri held that:

> "The testimony of a judge that the court verbally ordered an act to be done is inadmissible; the records of the court are the evidence of its official acts."

The only order with reference to the drawing of the grand jury panel was made by Judge WILLIAMS at Muskogee on May 30, 1925, *in the court of the new Eastern District* in the following language:

> "It is ordered that the jury commissioner and the clerk of the court draw 23 grand jurors and 3 alternate grand jurors to appear at Muskogee on June 22, 1925, at 9 A. M." (Rec. 103.)

The grand jury that returned the indictment in this case was obtained under this drawing and the drawing was made from the jury box after it had been deleted of all names of jurors from the ten counties of the old Eastern District which are not now in the new Eastern District and the grand jury that returned this indictment, at the same time, on June 23,

1925, found and returned fourteen other indictments, nine of which were for offenses committed since the 16th day of February, 1925, and the other five were for offenses committed prior to February 16, 1925, all of which indictments were returned into the same court at the same time and proceeded with by the same court in the same district, which was the new Eastern District and the court thereof, the same as if there was no difference or distinction between the new and the old Eastern Districts or the courts thereof.

The court has not mentioned or answered our objection to the indictment that the grand jury was not publicly but secretly drawn. That objection alone, we contend, is sufficient to avoid the indictment.

The order for the drawing of the petit jury panel was made by Judge R. L. Williams at Muskogee, Oklahoma, on December 2, 1925, in the court for the new Eastern District in the following language:

> "It is ordered by the court that the clerk and jury commissioner of this court draw the names of thirty persons from the jury box for petit jurors, to appear at Ardmore, Oklahoma, on January 18, 1926, at 9:00 of said date." (Rec. 133.)

The petit jury that returned the verdict of guilty in this case was obtained partly under this drawing from the jury box after it had been deleted of all names of jurors from the ten counties of the old Eastern District which are not in the new Eastern District. When the regular panel was exhausted, the court ordered an open venire to the marshal to summon twenty men from the body of the district. (Rec. 176, 177.) The trial jury, as finally constituted, was composed of five jurors out of the regular panel and seven jurors out of

the open venire. All of the jurors were from the vicinity of Ardmore in the new Eastern District and none of them were from any of the ten counties of the old Eastern District which are not now in the new Eastern District.

All of these orders for the drawing of the jurors were made by the court for the new Eastern District and the jurors were drawn from the jury box for the new Eastern District, except those obtained under the open venire, who were summoned by the marshal from the counties in the new Eastern District in the vicinity of Ardmore. These orders could not be considered as orders made by the court of the old Eastern District, but if they were so considered, their effect, under the authority of *May* v. *United States*, 199 Fed. 53 (8th Circuit), would be to require the panel to be drawn from the whole body of the old Eastern District and this was not done.

The court says in its opinion in the instant case:

> "We hold that section 59 of the Judicial Code hereinabove set out has express application here, in that it provides for a trial in the district from which counties have been transferred in the same manner as if such counties had not been transferred, unless upon application of the defendant, the court should order the cause to be removed to the new district for trial; *provided*, of course, that the offense was committed in one of the counties so transferred to the new district."

That means that the trial must be had in the district *from* which counties have been transferred in the same manner as if such counties had not been transferred. It cannot and does not mean that the trial must be had in the district *remaining* after the counties had been transferred or in the district *to* which the counties had been transferred. What about the indictment? This court makes no reference to the

indictment, although its validity was properly challenged by motion to quash for want of jurisdiction and because the grand jury was not publicly drawn. The accused objected to the jurisdiction of the court for the new Eastern District to indict and also to its jurisdiction to try this case. If the Act of February 16, 1925, had not been passed, the court for the old Eastern District would have had power and jurisdiction to summon grand and petit jurors from any or all of the counties in the district as it then existed and could have sat and held court at Tulsa, in Tulsa County, where the offense was committed, which is the place fixed by the division order of Judge SANBORN for the trial of the case as held in *Case* v. *United States*, 14 Fed. (2nd Series) 510. Section 59 of the Code gives the accused the option of being tried either in the court for the old Eastern District, with all of the power and jurisdiction it had before the act was passed, or in the court for the Northern District, as the same now exists, and yet this court has forced the accused to accept an indictment found in the court of the new Eastern District and to be tried in that court, which cannot summon jurors, grand or petit, from the ten counties of the old Eastern District, and cannot sit or hold a term of court at Tulsa, where the offense was committed.

The court further says in its opinion:

> "Upon the organization of the Northern District of Oklahoma, the divisional order of the Senior Circuit Judge ceased and terminated, except in so far as the authority of the Junior Judge of the Eastern District was continued in him as judge of said Northern District and except as to authority expressly conferred by law on said courts, judges or officers or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of said North-

ern District. This conferred upon the plaintiffs in error the right to have this case tried at Tulsa in the present Northern District, if upon their application, the court should order the case to be removed to the Northern District for trial."

It must be conceded that as to past offenses, the divisional order of Judge SANBORN did not cease or terminate, but continued in full force and effect as law because it was confirmed and approved by Congress in the Act of February 16, 1925, as held by this court in *Case* v. *United States*, 14 Fed. (2nd Series) 510. This divisional order fixed the place of trial of the offense in this case at Tulsa, in the second division of the old Eastern District and this court held in *Case* v. *United States, supra*, that the *place* of trial under said divisional order and Act of Congress was jurisdictional and discharged the accused under a writ of *habeas corpus* because he was convicted at a different place, in a different division of the district and before a different judge than the one to whom the case had been assigned by the division order. This division order also provides that the functions of the court in passing on law questions and in the trial of criminal cases on *motions, demurrers* and pleas, shall be exercised in the division in which the offense is charged to have been committed. This division order, therefore, just as firmly fixed the *place for ruling* on the motion to dismiss, the motion to quash the indictment and the demurrer to the indictment, as it fixed the place of trial on the merits, and the one is just as much jurisdictional as the other, and yet this court has held by its affirmance of this case that Judge KENNAMER had jurisdiction to rule on the motion to dismiss, the motion to quash the indictment and the demurrer, at Muskogee in the first division of the district, when Judge SANBORN's division order juris-

dictionally fixed the place for the exercise of these functions at Tulsa in the second division of the district, and this court by its affirmance, has held that the accused could be tried at Ardmore, when the SANBORN division order jurisdictionally fixed the place of trial at Tulsa.

Can it be contended successfully that because under section 59 of the Judicial Code and Section 5 of the Act of Congress of February 16, 1925, the plaintiffs in error are given the right to a trial in the court of the Northern District of Oklahoma upon their application, they are thereby denied the right to insist that they cannot be indicted in a court which does not have jurisdiction over the place where the offense was committed and are thereby denied the right to insist upon a trial in a court which has jurisdiction to summon jurors from any and every part of the district as it existed at the time the offense was committed? This court has held, in effect, by its affirmance of this case, that because the accused did not move to transfer to the Northern District, they can be indicted and tried over their timely objection in the court of the new Eastern District, which does not have jurisdiction over, or power to summon grand or petit jurors from, the county and vicinity in which the offense was committed; that by failing to move to transfer from the court of the new Eastern District to the court of the Northern District, plaintiffs in error waived their right to insist upon indictment and trial in the court for the old Eastern District, and thereby conferred, by consent, upon the court for the new Eastern District, jurisdiction to indict and try them, although that court did not have jurisdiction under any Act of Congress and could not be invested with such jurisdiction in the face of the Sixth Amendment to the Constitution.

Consent cannot give jurisdiction to courts of the United States.

—*Wick* v. *United States*, 290 Fed. 191 (Eighth Circuit);
Railway Company v. *Ramsey*, 22 Wall. 322, 327, 22 L. ed. 823, 824;
Exporters v. *Butterworth, Judson & Co.*, 258 U. S. 365, 66 L. ed. 663;
Graves v. *Corbin*, 132 U. S. 571, 33 L. ed. 462.

Courts of the United States, other than the Supreme Court, have only such jurisdiction as Congress has specifically conferred upon them and it is very clear that Congress has, under section 59 of the Judicial Code and section 5 of the Act of February 16, 1925, withheld jurisdiction from the court for the new Eastern District of Oklahoma in the prosecution of offenses committed prior to February 16, 1925, and has specifically retained jurisdiction for that purpose in the court of the old district as it existed at the time the offenses were committed. Neither section 59 of the Code, nor section 5 of the act is susceptible of any other construction.

When it is conceded as this court has conceded, and specifically held, that the court for the new Eastern District has no jurisdiction over the territory embraced in the ten counties of the old Eastern District, where the crime is alleged to have been committed, which are not now in the new Eastern District and has no power or jurisdiction to summon jurors from any of said ten counties, it necessarily follows that the court for the new Eastern District is an entirely separate and distinct court from that of the old Eastern District, because it must be conceded that if the change had not been made by the Act of February 16, 1925, the court of the old Eastern District did have jurisdiction and could summon ju-

rors therefrom. The two courts cannot be the same and at the same time have different territorial jurisdiction.

A court cannot function outside of its territorial jurisdiction, *Rosencrans* v. *United States*, 165 U. S. 257, 41 L. ed. 708, and the court for the new Eastern District cannot sit at Tulsa, which is outside of the territorial limits of the new Eastern District, and yet if the Act of February 16, 1925, had not been passed, the court for the old Eastern District could sit at Tulsa, where the division order of Judge SANBORN jurisdictionally fixed the place for the trial of offenses committed in Tulsa County.

Jurisdiction over the person may be conferred by consent, but jurisdiction over the subject-matter cannot be conferred by consent. In the case at bar, the court for the new Eastern District had no jurisdiction over the subject-matter—the offense which was committed outside of its territorial jurisdiction.

The grand jury is inseparably connected with, and a part of, the court in which it functions and its jurisdiction is co-extensive with, and limited by, that of the court in which it is empaneled and for which it is to make inquiry.

—28 Corpus Juris, section 88, page 797;

United States v. *Hill*, 26 Fed. Cases 315, Case No. 15,364;

Logan v. *United States*, 144 U. S. 263, 36 L. ed. 429.

A grand jury is a local tribunal and cannot inquire into offenses committed outside of its jurisdiction. (See cases cited in Note 86, at page 797 of 28 Corpus Juris.) In the case at bar, the grand jury that returned the indictment was empaneled in, and for, the court for the new Eastern District of Oklahoma, on June 22, 1925, several months after the Act

of February 16, 1925, took effect and after the court for the Northern District of Oklahoma had been organized on April 1st, 1925. At the same time it returned the indictment in this case, it returned other indictments for offenses committed in the new Eastern District since its creation, and it is conceded by the Government to have been a grand jury empaneled in and for the court of the new Eastern District, as it now exists.

We, therefore, submit that the only theory upon which the Sixth Amendment to the Constitution, section 59 of the Judicial Code and the Act of February 16, 1925, can be harmonized, is to hold, as we have contended, that the new Eastern District is not the same as the old Eastern District, but has a separate and distinct identity; that the court for the new Eastern District is not the same as the court for the old Eastern District, but has a separate and distinct identity and existence, without the same jurisdiction, without the same judges and without the limitations and restrictions of the division order of Judge Sanborn which was approved and confirmed by Congress as to offenses committed before February 16, 1925; that the court for the old Eastern District, and the old Eastern District itself, are preserved and their jurisdiction reserved for the indictment and trial of offenses committed before the passage of the Act of February 16, 1925. That the court for the old district may, and should, continue to sit and exercise its jurisdiction as to past offenses at such places as the old law provided and with full and complete jurisdiction under the old law, over the territory where this offense was committed, with full power and jurisdiction to try the accused at Tulsa in the second division of the old Eastern District, and with full power and jurisdiction to summon

jurors, both grand and petit, from any part of the old Eastern District that the court might determine would be most favorable to an impartial trial, without incurring an unnecessary expense or unduly burdening the citizens of that part of the district with such service. It would be a paradox to say that under section 277 of the Judicial Code, the court may order the jury drawn from any part of the district and then in the same breath say that the court has no jurisdiction or power to summon jurors from a certain part of that district. Yet, that is the effect of this court's affirmance of this case.

IV.

We insist that the court has misconstrued the meaning of the word "entry" and the word "book" as used in section 5209 of the statute. The construction we have contended for is supported by the decisions we cited in our original brief and by the contemporaneous construction of the Department of the Government having jurisdiction over the administration of the National Banking Laws and over the prosecution of offenses against those laws continued for more than sixty-four years, but we have said all that we can say and have cited all of the authorities that we can find bearing upon that question, and, therefore, can say nothing in this petition for rehearing that has not already been said.

V.

We likewise insist that this court has erred in holding that the evidence is sufficient to sustain the conviction under the last three counts of the indictment charging false entries in certain reports to the comptroller of the currency. On this subject, we desire to cite, in addition to the authorities con-

tained in our original brief, the case of *Hyde* v. *United States*, 15 Fed. (2nd Series) 816, decided by the Circuit Court of Appeals for the Fourth Circuit on October 19, 1926.

We respectfully urge upon the court a reconsideration of this case, including a re-examination of our original brief and especially our reply brief in the light of what has been said in this petition for rehearing, and in connection with it, and we most earnestly and respectfully ask this court to correct the erroneous statements in its opinion which we have called the court's attention to. If this court, on rehearing, affirms the conviction in the court below, and we should desire to take the case to the Supreme Court of the United States, we do not want to be embarrassed or handicapped in that court by being forced to contend and insist there that this court's opinion contains erroneous statements as to the record in the case.

We take it that there is but little question but what the Supreme Court will grant the writ of *certiorari* in the *Quinlan* case and will there construe in the near future, the meaning of the Sixth Amendment and section 59 of the Judicial Code. However, in that case, the distinction between the new Southern District of Georgia and the old Southern District, and the distinction between the court of the new Southern District and that of the old Southern District may not be drawn or passed on, because not involved or material in that case. If, however, the Supreme Court in that case gives the subject a thorough consideration and passes therein on the questions involved here before this court rules on this petition for rehearing, we shall ask leave of court to supplement this argument by discussion of the Supreme Court's opinion in that case.

The plaintiffs in error request the court for an oral argument on this petition for rehearing and that the court make an order allowing same.

Respectfully submitted,

R. L. Davidson,
W. I. Williams,
Attorneys for Plaintiffs in Error.

The undersigned counsel of record for plaintiffs in error hereby certify that the foregoing petition for rehearing is made in good faith and that they honestly and firmly believe it is well taken and that the relief asked for should be granted.

R. L. Davidson,
W. I. Williams,
Attorneys for Plaintiffs in Error.

(Endorsed): Filed in U.S. Circuit Court of Appeals, Jan. 24, 1938.

984 (Opinion on Motion for Rehearing.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, A. D. 1928.

Allie E. Lewis and William Lloyd Lewis, Plaintiffs in Error,
No. 7492. vs.
United States of America, Defendant in Error.

In Error to the District Court of the United States for the Eastern District of Oklahoma.

On Motion for Rehearing.

Before Stone and Van Valkenburgh, Circuit Judges.

Per Curiam:

After careful consideration of the matters presented in the petition for rehearing we adhere to the conclusions announced in the opinion filed to which that petition is addressed. It appears, however, that through similarity of situations, the decision of this court in Lewis, et al vs. United States, 14 Fed. (2d) 369, was treated as having been rendered in the instant case. It is now brought to our attention that this was a misconception, which the arguments of counsel at the hearing failed to remove. The opinion, therefore, should be, and hereby is, modified in that particular. However, Lewis, et al vs. United States, (14 Fed. (2d) 369) was referred to, not as declaring the law of this case, but as announcing principles which we regarded, and still regard, as convincing and decisive of certain of the issues before
985 us. Therefore, the modification now made in nowise affects the ultimate conclusion reached. The rehearing prayed is accordingly denied.

Filed May 7, 1928.

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986 (Order denying Petition for Rehearing.)

May Term, 1928.

Monday, May 7, 1928.

This cause came on this day to be heard upon the petition for a rehearing, filed by counsel for Plaintiffs in Error.

On Consideration Whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

May 7, 1928.

(Motion to Stay Issuance of Mandate.)

The plaintiffs in error, Allie E. Lewis and William Lloyd Lewis, who were defendants in the Court below, respectfully request the United States Circuit Court of Appeals for the Eighth Circuit to stay the mandate in the above styled cause pending the making of an application on their part to the Supreme Court of the United States for a writ of certiorari and pending proceedings in the Supreme Court to review the decision of the United States Circuit Court of Appeals for the Eighth Circuit in this case, and in that connection, they respectfully represent and show to the Court:

That they intend to proceed as rapidly as possible under the circumstances to apply to the Supreme Court of the United States for a writ of certiorari to review the judgment of this Court in this cause; that they have heretofore furnished the Clerk of this Court the requisite number of extra
987 copies of the printed record and are, simultaneously with the filing of this motion, requesting the Clerk of this Court to certify a complete record of this cause in this Court and to have the requisite number of copies of said record printed under the supervision of the Clerk of this Court and have requested the Clerk of this Court for a statement of the costs of the certification and printing of said record. That as soon as certification of the transcript of the record and the printing thereof have been completed, they will proceed with dispatch to prepare and file with the Clerk of the Supreme Court of the United States, an application for a writ of certiorari and a brief in support thereof; that the defendants will deposit with the Clerk of this Court, as soon as notified, the deposit required to cover the cost of certifying and printing the record as requested.

R. L. DAVIDSON,
W. I. WILLIAMS,
Attorneys for Plaintiffs in Error.

State of Oklahoma,
County of Tulsa.

The affiant, R. L. Davidson, being first duly sworn, states under oath that he is one of the attorneys of record for the plaintiffs in error in the above styled cause; that he has been directed by the plaintiffs in error to proceed with dispatch to obtain a review of the decision of the Circuit Court of Appeals in the above styled cause through a writ of certiorari from the Supreme Court of the United States and that the statements contained in the foregoing motion are true; that

he believes in good faith that a writ of certiorari ought
988 to be allowed in this case by the Supreme Court and that the proceedings on the part of the plaintiffs in error to obtain such review are in good faith and will be prosecuted with due diligence.

R. L. DAVIDSON.

Sworn to and subscribed before me this the 10th day of May, 1928.

(Seal) BRADFORD J. WILLIAMS,
Notary Public.

My Commission Expires: April 2, 1932.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 12, 1928.

(Order Staying Issuance of Mandate.)

May Term, 1928.

Monday, May 14, 1928.

On Consideration of the motion of plaintiff in error, supported by affidavit, for a stay of the mandate in this case pending a petition to the Supreme Court of the United States for a writ of certorari, It is now here ordered by this Court that the issuance of the mandate herein, be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed and proof by affidavit of notice thereof under Paragraph 3 of Rule 35 of the Supreme Court be given, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 14, 1928.

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989 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals of the Eighth Circuit do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said

District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Allie E. Lewis, et al., were Plaintiffs in Error and the United States of America was Defendant in Error, No. 7492, as full, true and complete as the orginals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fourth day of May, A. D., 1928.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

ORDER ALLOWING CERTIORARI—Filed October 8, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. The argument is to be limited to the question of jurisdiction and the determination whether the trial took place in accordance with the act of February 16, 1925, and section 59 of the Judicial Code, properly construed, and whether the right of petitioner under the Sixth Amendment to the Constitution was infringed thereby.

SUPREME COURT OF THE UNITED STATES.

No. 182.—October Term, 1928.

Allie E. Lewis and William Lloyd Lewis, Petitioners, vs. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[March 5, 1929.]

Mr. Justice Sanford delivered the opinion of the Court.

In 1925 the petitioners were indicted in the District Court for the Eastern District of Oklahoma for violations of the National Banking Laws alleged to have been committed in 1923 at Tulsa, in Tulsa County, Oklahoma. Motions to quash and dismiss the indictment on the grounds that the court was without jurisdiction of the prosecution and that the grand jury had not been legally constituted, and to quash the petit jury panel, were overruled. The petitioners were tried, convicted and sentenced. The judgment was affirmed by the Circuit Court of Appeals. 22 F. (2d) 760; 26 F. (2d) 465. And the cause is here for limited review. — U. S. —.

The contentions of the petitioners are, in substance: that the District Court had no jurisdiction, because when the indictment was returned and when the case was tried, Tulsa County, in which it was alleged the offenses had been committed, was not within the territorial limits of the district; and that the grand and petit juries were not legally constituted because drawn from a jury box from which the names of all persons from Tulsa and certain other counties had been removed.

Under § 101 of the Judicial Code, enacted in 1911, Oklahoma was divided into two judicial districts:—the Eastern, embracing Tulsa and thirty-nine other counties; and the Western, the remaining counties in the State.

In 1924—the two judges of the Eastern District not having agreed upon the division of business and assignment of cases for trial—the senior circuit judge, pursuant to § 23 of the Judicial

Code, made an order assigning the holding of sessions of the grand jury and the receiving of indictments, etc., for the entire district,[1] and all other judicial business arising in or coming from certain designated counties to the senior district judge, and all other judicial business in or from the remaining counties, including Tulsa County, to the junior district judge, and assigning the Tulsa County cases for hearing and trial at Tulsa unless otherwise ordered by that judge.

By an Act of February 16, 1925,[2] Sec. 101 of the Judicial Code was amended so as to divide Oklahoma into three judicial districts: the Northern, Eastern, and Western. The Northern District embraced ten counties, including Tulsa County, which previously had been in the Eastern District, and two counties formerly in the Western District. The Eastern District embraced the remaining thirty counties which previously had been in that district. The senior judge of the Eastern District was assigned to that District; and the junior judge, to the Northern District. Terms of court for the Eastern District, were to be held at Muskogee, Ardmore and three other court towns, as before, and at two other places instead of Tulsa and another court town which were placed in the Northern District. And the clerk, in addition to keeping his office at Muskogee, as before, was also required to maintain an office in charge of a deputy at Ardmore. No other change was made in the court for the Eastern District. By § 5 of the Act it was further provided that:

"The jurisdiction and authority of the courts and officers of the . . eastern district of Oklahoma as heretofore divided between them by the order of the senior judge of the Circuit Court of Appeals . . over the territory embraced within said northern district of Oklahoma shall continue as heretofore until the organization of the district court of said northern district, and thereupon shall cease and determine, save and except . . as to the authority expresly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said northern district, and save and except as to any other

[1] The reason for this, as stated in the order, was that the offices and records of the marshal and district attorney were at Muskogee [a court town in Muskogee County], and it had been the practice to hold there the sessions of the grand jury for the entire district.

[2] 43 Stat. 945, c. 223.

authority expressly reserved to them or any of them under any law applicable in the case of the creation or change of the . . districts of district courts of the United States."

This last reference, it is plain, covered the general provision in § 59 of the Judicial Code that: "Whenever any new district . . has been or shall be established, or any county or territory has been or shall be transferred from one district . . to another district . . , prosecutions for crimes and offenses committed within such district, . . county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district . . had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district . . for trial."[3]

The Northern District was organized on April 1, 1925. Thereupon, as provided by the Act of 1925, the divisional order of the circuit judge as to the Eastern District ceased to be operative; and the court of the Eastern District continued to function, without any reorganization, under the senior district judge.

On April 7 the clerk and jury commissioner of the Eastern District removed from the jury box from which the grand and petit jurors were drawn, the names of all persons from the ten counties that had been transferred to the Northern District. Nearly two months thereafter the senior district judge, presiding in the Eastern District, made an order for the drawing of the names of grand jurors for a term to be held at Muskogee. This was one of the court towns of the Eastern District both under § 101 of the Judicial Code and the amendment of 1925, and the town at which it had been the practice to hold sessions of the grand jury for the entire district.[4] In consequence of the previous removal of the names of persons from the ten transferred counties, the grand jury, as drawn in pursuance of the judge's order, contained no persons from any of these counties. The indictment was returned in June, 1925, at Muskogee.

After the return of the indictment the fact that the names of all persons from the ten transferred counties had been removed

[3] At the hearing of the motion to dismiss the indictment counsel for the petitioners, in answer to a question from the court, stated that it was not their purpose to claim the right to be tried in the Northern District.

[4] See note 1, *supra*.

from the jury box was called to the attention of the judge by the motion to quash and dismiss the indictment and the evidence offered in support thereof, on which he ruled in July. Thereafter, in December, 1925, nearly eight months after these names had been removed, he made an order directing that petit jurors be drawn from the jury box for a term of court to be held at Ardmore—another one of the court towns in the Eastern District under both § 101 of the Judicial Code and the amendment of 1925. The petit jury drawn in obedience to this order likewise contained no persons from any of the transferred counties. The trial was had at Ardmore in January, 1926, before a district judge of Kansas, sitting by assignment, and the petit jury.

1. The contention that the District Court was without jurisdiction in this case rests, in substance, upon the argument that the petitioners were not indicted and tried in the court for the old Eastern District that had jurisdiction in Tulsa County, but in the separate court created by the Act of 1925 for the new Eastern District that was not the same court as that of the old Eastern District and had jurisdiction in only thirty of the forty original counties.

This, we think, is untenable. Rightly construed, the Act of 1925—as shown especially by the specific provisions of § 5, including the reference to § 59 of the Judicial Code—did not create a new court for a new district, but merely amended Sec. 101 of the Judicial Code by limiting the territorial jurisdiction of the court for the Eastern District, for most purposes, to certain counties, while continuing its original territorial jurisdiction for the purpose of commencing and continuing prosecutions for crimes and offenses previously committed therein. In short, the identity of the court was not changed; and it continued to be, as it had been before, the court of the Eastern District. Aside from the transfer of one of the judges, its officers continued as before, retained the custody of its records, and were charged with the same duties. And while its territorial jurisdiction was reduced for most purposes, this was not changed for the prosecution of past offenses, but for that purpose remained as before—that is, as defined and ascertained by § 101 of the Judicial Code. Compare *United States* v. *Hackett* (C. C.), 29 Fed. 848, 849; *United States* v. *Benson* (C. C.), 31 Fed. 896, 898, in which the opinion was delivered by Mr. Justice Field as circuit justice; *In re Benson* (C. C.), 58 Fed.

962, 963; *In re Mason* (C. C.), 85 Fed. 145, 148; *Mizell* v. *Beard* (D. C.), 25 F. (2d) 324, 325.

We are further of opinion that the Act of 1925 did not contemplate that the court for the Eastern District, sitting in a dual capacity as the court for both the original and the restricted district, should be reorganized and divided into two distinct tribunals —one for the original the other for the restricted district—but that it was intended that, sitting as one and the same court, it should from time to time exercise either its original or restricted territorial jurisdiction, as occasion might require. Here, the indictment—which was entitled in the District Court for the Eastern District of Oklahoma and alleged specifically that the offenses had been committed in 1923 at Tulsa, "in said district, and within the jurisdiction of this court"—was, plainly, sufficient to invoke the exercise of its jurisdiction as the court for the Eastern District sitting for the commencement and conduct of prosecutions of offenses committed prior to the amendment of 1925 within the territorial limits of the district as originally constituted.

We therefore conclude that the petitioners were both indicted and tried in the court for the Eastern District, sitting as the court for the entire original district, including the counties that had been transferred to the Northern District after the offenses were committed. This was in accord with § 5 of the Act of 1925 and § 59 of the Judicial Code. And, as this district had been ascertained by § 101 of the Judicial Code before the offenses had been committed, there was no violation of the provision of the Sixth Amendment granting an accused person the right to a trial by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

2. Since the court for the Eastern District was sitting *pro hac vice* as one for the entire district as originally constituted, it had authority for the purposes of the prosecution and trial to draw and summon jurors from the entire district, including the ten transferred counties. See *United States* v. *Hackett, supra*, 849. It was not necessary, however, that this be done. The Sixth Amendment does not require that the accused be tried by jurors drawn from the entire district. *Ruthenberg* v. *United States*, 245 U. S. 480, 482, and cases cited. Sec. 277 of the Judicial Code provides that "Jurors shall be returned from such parts of the

district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service."

In the situation in which the court would deal occasionally with past offenses in which jurors from the ten transferred counties would be eligible, but ordinarily with cases in which jurors from such counties would not be eligible, the judge might well have thought that it would be most favorable to impartial trials and avoid unnecessary expense or undue burden to the citizens of these ten counties to return only jurors from the thirty other counties—who would be eligible to service in all cases. The evidence, it is true, does not affirmatively disclose that he gave any such direction or required the names of the persons from the ten counties to be removed from the box; nor does it affirmatively show the contrary. But since the names of these persons had been removed almost two months before he made the order to draw the grand jurors—he did not direct those names to be restored to the box—and his attention had been called to the removal of these names before making the order to draw the petit jurors from the box—it fairly may be inferred that he had either directed that the names be removed or approved the removal before making the orders for drawing the jurors.

And even if it can be regarded as essential, under § 277 of the Judicial Code, that the judge should have given written direction to draw the jurors from part of the district only, still, as the contrary is not expressly shown, such a direction may be taken as sufficiently established by the presumption of regularity. See *Steers* v. *United States* (C. C. A.), 192 Fed. 1, 4. It is the settled general rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and that where the contrary is asserted it must be affirmatively shown. *Nofire* v. *United States*, 164 U. S. 657, 660; *United States* v. *Royer*, 268 U. S. 394, 398; and cases cited.

We find that the District Court had jurisdiction of the case; that the constitution of the grand and petit juries was not illegal; and that there was no invasion of the petitioners' rights under the Sixth Amendment. The judgment is

Affirmed.

No. [illegible]

In the Supreme Court of the United States

October Term, 1939

ALLIE S. LEWIS AND WILLIAM LLOYD LEWIS,
Petitioners,
vs.
UNITED STATES OF AMERICA, Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit and Brief in Support Thereof.

L. L. DAVIDSON,
W. L. WILLIAMS,
FRED S. RISLEY,
Counsel for Petitioners.

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IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1927.

No. .....

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,
Petitioners,
vs.
UNITED STATES OF AMERICA, *Defendant.*

PETITION FOR WRIT OF *CERTIORARI*.

The petitioners, Allie E. Lewis and William Lloyd Lewis, within the time allowed by law, bring this their petition for *certiorari* and respectfully show to this honorable court:

Summary Statement of the Matter Involved.

The petitioners were indicted on June 23, 1925, in the United States Court for the new Eastern District of Oklahoma by a grand jury drawn and impaneled exclusively from the territory embraced within said new Eastern District and charged in forty counts with violating the National Banking laws in Tulsa County, Oklahoma, in the year 1923. The first thirty-seven counts charge the making of

false entries in a certain minute book of the Liberty National Bank of Tulsa, Oklahoma, and the last three counts charge the making of false entries in three certain separate reports of said bank to the comptroller of the currency showing the financial condition of the bank as of certain dates (R. 1). At the time the offenses were committed, Oklahoma was divided into two federal court districts, known as the Eastern and Western Districts of Oklahoma, with Tulsa County included in the Eastern District, but at the time the indictment was returned, the state had been divided into three new and independent districts, designated as the Northern, Eastern and Western Districts, by the Act of Congress approved February 16, 1925 (43 Stat. 945). The newly created Northern District comprises ten counties which were formerly a part of the old Eastern District and two counties which were formerly a part of the old Western District. The newly created Eastern District comprises the remaining counties of the old Eastern District and the newly created Western District comprises the remaining counties of the old Western District. Under this act, Tulsa County was included in the Northern District. The indictment was returned in the court for the new Eastern District sitting at Muskogee, Oklahoma, on June 23, 1925, charging offenses committed in Tulsa County long prior to the passage and approval of the Act of February 16, 1925. A copy of said act may be found in the appendix hereto under the heading "A."

On July 23, 1924, and prior thereto, the court of the old Eastern District had two judges, the Hon. R. L. Wil-

IAMS, Senior Judge, and the Hon. FRANKLIN E. KENNAMER, Junior Judge. Upon their failure to agree upon the division of business and the assignment of cases for trial in their district, the Senior Circuit Judge of the Circuit, the Hon. WALTER H. SANBORN, made an order on July 23, 1924, dividing the district into two divisions and providing for the division of business and the assignment of cases for trial in the district. This order placed Tulsa County in the second division, declared the judicial business arising therefrom tributary to the court at the City of Tulsa and assigned such business exclusively for trial at Tulsa before the Honorable F. E. KENNAMER. A copy of this order is shown in the record on page 87 and also in the appendix hereto under the heading "B."

Section 2 of the Act of February 16, 1925, assigned Judge WILLIAMS to the new Eastern District and Judge KENNAMER to the Northern District and conferred upon them the same jurisdiction and powers within their respective new districts as they exercised and performed within their respective old districts prior to the passage of the act, and section 5 of the act provides that the jurisdiction and authority of the courts and officers of the old Eastern District as theretofore divided between them by the order of the Senior Judge of the Circuit Court of Appeals, over the territory embraced within the Northern District, should continue as theretofore until the organization of the District Court of said Northern District, but that such jurisdiction and authority should thereupon cease and determine, save and except insofar as the authority of Judge KENNAMER was continued in him as Judge of the Northern

District and save and except as to the authority expressly conferred by law on said courts, judges and officers or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of said Northern District, and save and except as to any other authority expressly reserved to them, or any of them, under any law applicable in the case of the creation or change of the divisions or districts of District Courts of the United States. (Compiled Statutes, section 1088-D.) This Act of Congress took effect on the day of its approval, February 16, 1925, and the District Court for the Northern District of Oklahoma was organized April 1st, 1925.

The petitioners attacked the indictment by motion to quash and dismiss, upon the ground (among others), that the court of the new Eastern District did not have jurisdiction to indict for the offenses charged (R. 76 to 84). They also moved to dismiss the cause in the new Eastern District on the ground that the court thereof had no jurisdiction to try the case (R. 70). These motions were overruled (R. 52-53) by Judge Kennamer at Muskogee, Oklahoma, on July 20, 1925, at a special term of the court for the new Eastern District called by him at Muskogee, Oklahoma, on the 16th day of July, 1925, under an assignment made by Judge Kimbrough Stone as acting Senior Judge of the Circuit Court of Appeals on the 29th day of June, 1925 (R. 86). Exceptions were taken and allowed. The petitioners also attacked each count of the indictment by demurrer (R. 51), the first thirty-seven counts, on the ground (among others) that the alleged false statements made in

the minute book of the bank were not "entries" within the meaning of that word as used in section 5209 of the Revised Statutes, and that the "minute" book of the bank was not a "book" of the bank within the meaning of that word as used in section 5209, Revised Statutes, and they attacked each of the last three counts by demurrer on other grounds. The demurrers were overruled by Judge KENNAMER at the same time and place and at the same term of court that he overruled the motions (R. 53). Exceptions were saved and allowed.

The petitioners were thereafter tried on this indictment in the court for the new Eastern District at Ardmore, Oklahoma, in January, 1926, and were convicted on all of the counts of the indictment except the twenty-first, thirty-first, thirty-fifth and thirty-seventh. Upon the first count of the indictment, each petitioner was sentenced to pay a fine of $5,000.00 and costs of prosecution and to be imprisoned in the United States penitentiary at Leavenworth, Kansas, for a term of five years, and on each of the remaining counts, were sentenced to be imprisoned for five years, the sentence on the last thirty-five counts of said indictment to run concurrently with each other and with the sentence imposed on count 1 (R. 65). The objection to the jurisdiction of the court to indict and try the petitioners and the sufficiency of each count as against the demurrer interposed, as well as the sufficiency of the evidence to sustain the conviction, was raised by the petitioners by motion for a directed verdict at the close of the Government's evidence in chief (R. 451 and 500), and again at the

close of all of the evidence (R. 797) and again by motion in arrest of judgment (R. 836), all of which were overruled and denied, and exceptions saved and allowed. Petitioners prosecuted an appeal by writ of error to the Circuit Court of Appeals for the Eighth Circuit, where the case was affirmed on the 28th day of November, 1927, and a petition for rehearing having been filed in due time, the same was denied by that court on May 7, 1928.

Reasons Relied on for Allowance of the Writ.

1. The Circuit Court of Appeals has decided in this case that a defendant may be indicted and tried in a United States Court of a district which had not been created at the time the offense was committed and which did not have jurisdiction over the place where the crime was committed at the time the indictment was returned or at the time the trial was had. This is an important federal question involving the proper construction of the Sixth Amendment to the Constitution of the United States, sections 24 and 59 of the Judicial Code and the Act of Congress of February 16, 1925, and was decided in a way in conflict with the applicable decisions of this court. (*United States* v. *Dawson*, 15 Howard 468, 14 L. ed. 775; *Cook* v. *United States*, 138 U. S. 157, 34 L. ed. 906; *United States* v. *Jackalow*, 66 U. S. 485, 17 L. ed. 225; *Gut* v. *State of Minnesota*, 76 U. S. 35, 19 L. ed. 573; *Salinger* v. *Loisel*, 265 U. S. 224, 68 L. ed. 989; *Todd* v. *United States*, 158 U. S. 278, 39 L. ed. 982; *Railway Company* v. *Ramsey*, 22 Wall.

322, 22 L. ed. 823; *Exporters* v. *Butterworth-Judson Company*, 258 U. S. 365, 66 L. ed. 663; *Graves* v. *Corbin*, 132 U. S. 571, 33 L. ed. 462; *Logan* v. *United States*, 144 U. S. 263, 36 L. ed. 429; *Rosencrans* v. *United States*, 165 U. S. 257, 41 L. ed. 708.)

2. This ruling of the Circuit Court of Appeals in this case is in conflict with a decision of the Fifth Circuit Court of Appeals on the same matter (*Quinlan* v. *United States*, 22 Fed. (2nd Series) 95, decided October 25, 1927, in which a petition for writ of *certiorari* was denied by this court on March 5, 1928), resulting recently in the District Court for the Northern District of Oklahoma discharging, on writ of *habeas corpus*, an accused indicted in the Middle District of Georgia for an offense committed in the Southern District of Georgia before the Act of May 28, 1926, was passed creating the Northern, Middle and Southern Districts of Georgia, on the theory that the decision in *Quinlan* v. *United States, supra*, holding such an indictment valid and legal, was in conflict with the decision of the Circuit Court of Appeals of the Eighth Circuit in the *Lewis* case and that the latter case was binding on the District Courts in that circuit. (*Mizell* v. *Beard, U. S. Marshal*, 25 Fed. (2nd Series) 324.)

3. This ruling of the Circuit Court of Appeals in this case is untenable and in conflict with the great weight of federal district and circuit court decisions. (*United States* v. *Maxon*, 5 Blatchford 360, 26 Fed. Cases 1220, case No. 15748; *United States* v. *Hackett*, 29 Fed. 848; *United States* v. *Benson*, 31 Fed. 896; *United States* v. *Greene*, 146 Fed. 776; *United States* v. *Wood*, 28 Fed. Cas. 755, case No

16755; *United States* v. *Hill*, 26 Fed. Cas. 315, case No. 15364; *Case* v. *United States*, 14 Fed. (2d) 510.)

4. This ruling of the Circuit Court of Appeals in this case has so far sanctioned such a departure from the accepted and usual course of judicial proceedings by the District Court of the new Eastern District of Oklahoma as to call for an exercise of this court's power of supervision.

5. The Circuit Court of Appeals in this case has held that the petitioners can be legally tried in the court of the new Eastern District at Ardmore, Oklahoma, although the division order of Judge Saxbourn jurisdictionally fixed the place of trial at Tulsa, Oklahoma, in the court of the Second Division of the old Eastern District. This ruling is in conflict with a prior decision of said court. (*Case* v. *United States*, 14 Fed. (2d) 510.)

6. The Circuit Court of Appeals in this case has held that the minute book of a bank is a "book" and the minutes of board meetings are "entries" within the meaning of those words as used in section 5209 of the Revised Statutes, prohibiting the making of false entries in books of national banking associations. This is an important question of federal law which has not been, but should be, settled by this court. It involves the proper construction of the meaning of the word "entry" and the word "book" as used in section 5209 of the Revised Statutes. This is the first and only case to be found in the Federal Reports construing the meaning of these words in a case where the false entry was charged to have been made in the minute book of a bank, although these words have been construed in sev-

eral federal cases where the false entry was charged to have been made in a book of account to mean, the word "entry"—an "item of account" and the word "book," a "book of account." (*United States* v. *Crecilius*, 34 Fed. 30; *United States* v. *Morse*, 161 Fed. 429; *United States* v. *Herrig*, 204 Fed. 124.)

7. This ruling of the Circuit Court of Appeals in this case is in conflict with the settled construction by the executive and judicial departments of the United States Government since 1864—a span of sixty-four years—that this statute does not cover the making of false minutes in the minute book of a bank.

8. The decision of the Circuit Court of Appeals in this case, in effect, holds that the wilfull misapplication of the funds of a national bank by an officer thereof, which results in the making of false entries in reports to the comptroller of the currency by other employees of the bank, without any direction to do so from the officer guilty of such misapplication, renders such officer guilty of making such false entires. This is an important federal question decided in a way in conflict with the applicable decisions of this court. (*Cochran* v. *United States*, 157 U. S. 286, 39 L. ed. 704; *Coffin* v. *United States*, 156 U. S. 432, 39 L. ed. 481.)

9. This ruling of the Circuit Court of Appeals is in conflict with, and contrary to, the weight of federal authority. (*United States* v. *McClarty*, 191 Fed. 523; *United States* v. *Herrig*, 204 Fed. 124; *Cooper* v. *United States*, 13 Fed. (2nd Series) 16; *Twining* v. *United States*, 141 Fed.

41; *United States* v. *Young*, 128 Fed. 111; *Dow* v. *United States*, 82 Fed. 904, 910.)

Wherefore, your petitioners respectfully pray that a writ of *certiorari* be issued out of, and under the seal of this honorable court directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that court to certify and to send to this court for its review and determination on a date certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7492, *Allie E. Lewis and William Lloyd Lewis, Plaintiffs in Error, vs. United States of America, Defendant in Error*, and that said judgment of the said Circuit Court of Appeals may be reversed by this honorable court and that your petitioners may have such other and further relief in the premises as to this honorable court may seem meet and just, and your petitioners will ever pray.

ALLIE E. LEWIS, and
WILLIAM LLOYD LEWIS,

By R. L. DAVIDSON,
W. I. WILLIAMS,
FINIS E. RIDDLE,
Counsel for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1927.

No. .....

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS,
Petitioners,
vs.
UNITED STATES OF AMERICA, *Defendant.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI*.

I.

The Opinion of the Court Below.

The opinion in the United States Circuit Court of Appeals for the Eighth Circuit was rendered November 28, 1927, and is reported in 22 Fed. Rep. (2nd Ser.) 760. It is copied in the record on page 900. The opinion on rehearing was rendered May 7, 1928, but has not been officially reported at this time. It is copied in the record at page 983.

II.

Jurisdiction.

(1) *Date of judgment to be reviewed.*

The judgment of the District Court was rendered March 30, 1926 (R. 65). The judgment of the Circuit Court

of Appeals was rendered November 28, 1927 (R. 900). Petition for rehearing was filed in the Circuit Court of Appeals on January 24, 1928 (R. 913), and was denied on May 7, 1928 (R. 983).

(2) *Specific claims advanced and rulings made in lower court relied upon as a basis of this court's jurisdiction.*

The petitioners asserted in the District Court and the Circuit Court of Appeals that: *(a)* The court for the new Eastern District of Oklahoma did not have jurisdiction to indict petitioners for the offenses charged because: *(1)* the new Eastern District, and the court thereof, had not been created at the time the offenses are charged to have been committed; *(2)* because that court had no power or authority to summon and impanel grand jurors from all parts of the old Eastern District as it existed at the time the offenses were committed; *(3)* because the place where the offenses were committed was outside of, and beyond, the territorial limits of the new Eastern District at the time the indictment was returned. *(b)* That the court for the new Eastern District of Oklahoma had no jurisdiction to try the petitioners on the indictment returned because: *(1)* the new Eastern District, and the court thereof, had not been created at the time the offenses were committed; *(2)* because that court had no power or authority to summon or impanel petit jurors from all parts of the old Eastern District as it existed at the time the offenses were committed; *(3)* because the place where the offenses were committed was outside of, and beyond, the territorial limits of the new Eastern District at the time the indictment was re-

turned and at the time the trial was had. *(c)* That the making of false statements in the minute book of the bank was not a violation of section 5209 of the Revised Statutes prohibiting the making of false entries in any book of a national banking association, because the word "entry" as therein used means an "item of account" and the word "book" as therein used means a "book of account," and the first thirty-seven counts of the indictment are bad on demurrer. *(d)* That the wilfull misapplication of the funds of a national bank by an officer thereof which results in the making of false entries in reports to the comptroller of the currency by other employees of the bank without any direction to do so by the officer guilty of such misapplication, does not render such officer guilty of making such false entries, and that the evidence was wholly insufficient to sustain a conviction of the petitioners on any of the last three counts of the indictment.

(3) *Statutory provisions under which jurisdiction is invoked.*

"In any case, civil or criminal, in a Circuit Court of Appeals * * *, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether government or other litigant, to require, by *certiorari*, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal." (28 U. S. C. A., section 347.)

(4) *Reference to cases believed to sustain jurisdiction.*

—*United States* v. *Gulf Refining Company*, 268 U. S. 542, 69 L. ed. 1082;

Section 347, 28 U. S. C. A.

Statement of the Case.

A concise statement of the case has been fully covered in the petition for writ of *certiorari* under the heading, "Summary of the Matter Involved," and in the interest of brevity, the statement is not repeated at this point.

Specifications of Errors.

1. The Circuit Court of Appeals erred in finding and holding that the District Court for the new Eastern District of Oklahoma had jurisdiction to indict the petitioners for the offenses charged in the indictment.

2. The Circuit Court of Appeals erred in finding and holding that the District Court for the new Eastern District of Oklahoma had jurisdiction to try the petitioners on the indictment returned.

3. The Circuit Court of Appeals erred in finding and holding that false statements in the minute book of the bank that directors' meetings were held and reports of discount committees made and approved and expense accounts were examined and approved, constitute "entries" within the meaning of that word as used in section 5209 of the Revised Statutes, and that the "minute" book was a "book" of the bank within the meaning of said statute, and erred

in not holding that the word "entry" as used in said statute means an "item of account" and that the word "book" as used therein means a "book of account," and erred in finding and holding the first thirty-seven counts of the indictment good as against demurrer.

4. The Circuit Court of Appeals erred in finding and holding that the wilfull misapplication of the funds of a national bank by an officer thereof which resulted in the making of false entries in reports to the comptroller of the currency by other employees of the bank without any direction to do so from the officer guilty of such misapplication, renders such officer guilty of making such false entries, and erred in finding and holding that the evidence under the last three counts of the indictment was sufficient to sustain a conviction thereon.

5. The Circuit Court of Appeals erred in finding and holding that the petitioners could be legally and lawfully indicted and tried in a court that did not have the power and authority to summon grand or petit jurors from every part of the district as it existed at the time the offenses were committed.

ARGUMENT.

Summary of the Argument.

Point A. The court for the new Eastern District of Oklahoma, where the petitioners were indicted and tried, did not have jurisdiction to indict or try them and the opin-

ion of the Circuit Court of Appeals in sustaining such conviction is contrary to, and in conflict with, prior federal decisions.

Point B. The first thirty-seven counts of the indictment fail to charge any offenses against the petitioners because the false entries charged are not items of account or made in a book of account of the bank.

Point C. The evidence is wholly insufficient to sustain a conviction of the petitioners under the last three counts of the indictment.

Point A.

The court for the new Eastern District of Oklahoma, where the petitioners were indicted and tried, did not have jurisdiction to indict or try them and the opinion of the Circuit Court of Appeals in sustaining such conviction is contrary to, and in conflict with, prior federal decisions.

The jurisdiction of the District Court for the new Eastern District of Oklahoma turns upon a construction of the Sixth Amendment to the United States Constitution, sections 24 and 59 of the Judicial Code and the provisions of the Act of Congress of February 16, 1925, amending section 101 of the Judicial Code relating to Federal District Courts and court districts in Oklahoma.

The Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and *district* wherein the crime

shall have been committed, which district shall have been previously ascertained by law."

Section 59 of the Judicial Code provides:

> "Whenever any new district or division has been, or shall be, established or any county or territory has been, or shall be, transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county or territory prior to such transfer shall be commenced and proceeded with the same as if such new district or division had not been created or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial."

Section 24 of the Judicial Code, so far as applicable, provides:

> "The District Court shall have original jurisdiction as follows: * * * *second*, of all crimes and offenses cognizable under the authority of the United States."

The Act of Congress of February 16, 1925, is not copied herein in full because of its length, but it is shown in the appendix under the heading "A."

It is uncontroverted that the petitioners were indicted in the *court* of the *new* Eastern District of Oklahoma by a grand jury drawn and impaneled exclusively from the territory now embraced in the new Eastern District and they were tried and convicted in the *court* of the *new* Eastern District before a petit jury drawn and impaneled exclusively from the territory now embraced within the new Eastern

District. They were not indicted or tried in the court of the old Eastern District or in the court of the Northern District. They were indicted and tried in a court that did not have jurisdiction over the place where the offenses were committed. If the Act of February 16, 1925, and section 59 of the Judicial Code preserved the old Eastern District and reserved jurisdiction in the court thereof for the indictment and trial of offenses committed before the passage of the act, then the court of the old Eastern District had jurisdiction and not the court of the new Eastern District. If the old district was not preserved and jurisdiction of its court reserved, then the court of the Northern District had jurisdiction in this case.

The new Eastern District does not have the same identity as the old Eastern District and the two are not the same in fact. The identity of a judicial district is determined solely and alone by its territorial boundary and one judicial district differs from any other judicial district solely in its territorial confines. There can be no other difference between different judicial districts. The new Eastern District has within its territorial boundary thirty counties. The old Eastern District, forty counties. The fact that the two districts have thirty counties in common cannot, in the very nature of things, make them the same district or give them the same identity, especially is this true when they are considered in reference to jurisdiction over an offense committed within a county which is within the territorial boundary of one district and without the territorial boundary of the other. The fact that the new Eastern District and the old Eastern District are both referred

to and designated in the Act of February 16, 1925, as the "Eastern" District has given rise to some confusion, although the language of the act itself very plainly shows that Congress had in mind the separate identity of the two districts and their courts and specifically preserved said identity in the act itself. That act, after creating under section 1 the new Northern, Eastern and Western Districts of Oklahoma, defining the territorial limits of each district and fixing the regular terms and places for holding court in each district, proceeds in sections 2 and 5 to provide as follows:

> *Section 2.* "The present Senior Judge of the Eastern District of Oklahoma be, and he is hereby assigned to hold said court in said Eastern District and shall exercise the same jurisdiction and perform the same duties within *said* district as he exercised and performed within *his* district prior to the passage of this act. That the present judge of the Western District of Oklahoma be, and he is hereby assigned to hold said court in the Western District of Oklahoma and shall exercise the same jurisdiction and perform the same duties in *said* district as he exercised and performed within *his* district prior to the passage of this act. That the present Junior Judge of the Eastern District of Oklahoma be, and he is hereby, assigned to hold said court in the Northern District and shall exercise the same jurisdiction and perform the same duties within *said* district as he exercised and performed within *his* district prior to the passage of this act. Each of said judges and courts shall in all other respects have all the power and authority, civil, criminal, equitable or otherwise, which is conferred by law generally upon the District Courts of the United States and the judges thereof."

district, fixed the times and places for holding the regular terms of court of each district and the places where the clerks of the courts should keep their offices and fixed and prescribed the jurisdiction and authority of each court and judge thereof, the act then proceeds in section 5 to deal with the jurisdiction and authority of the old courts and their officers and provides that the jurisdiction and authority of the courts and officers of the old Eastern District as theretofore divided between them by an order of the Senior Judge of the Circuit Court of Appeals for the Eighth Circuit should continue over the territory embraced within the Northern District as theretofore until the organization of the court for the Northern District, but thereupon, should cease and determine, save and except as to the authority expressly conferred by law in said courts, judges or officers or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District. The jurisdiction and authority of the old courts and their officers in all other respects had been terminated and destroyed by the creation of the new districts and the new courts thereof. As to past offenses, the old courts and the old districts were preserved by section 5 of the act, with the same powers and jurisdiction and with the same territorial boundaries as existed before the act was passed. The preservation of the old districts and the reservation of the jurisdiction of the old courts has always been regarded as necessary in view of the Sixth Amendment, to the legal prosecution of offenses committed prior to the change. Before section 59 of the Judicial Code was

adopted, each act changing the courts and districts contained a provision preserving the old districts and the jurisdiction of the old courts as to past offenses, and it was to avoid the necessity of incorporating such a provision in each act that Congress enacted section 59 of the Code.

The court for the new Eastern District is not the same court as that of the old Eastern District. The court for the new Eastern District has but one judge and no divisions and may sit at places and times in regular term where and when the court for the old Eastern District may not sit. The court for the old Eastern District has two judges, two divisions and may sit at places and at times in regular term where and when the court for the new Eastern District cannot sit. The court for the new Eastern District exercises jurisdiction over thirty counties and continues into the future from the date of its creation until destroyed by subsequent legislation. The court for the old Eastern District exercises jurisdiction over forty counties and does not continue into the future as theretofore for any purpose save and except over the territory embraced in the ten counties now in the Northern District for all purposes until the organization of the court for the Northern District and thereafter, only for the purpose of commencing and proceeding with the prosecution of offenses committed prior to the taking effect of the Act of February 16, 1925, and that limited and restricted jurisdiction will cease and terminate when all necessity for its existence in commencing and proceeding with the prosecution of crimes and offenses committed prior to the taking effect of the Act of February

16, 1925, has passed. It may sit and exercise jurisdiction over ten counties over which the court for the new Eastern District has no jurisdiction. It would seem that this question of the identity of the districts and the identity of the courts thereof is not open to controversy. It is so plain that it must necessarily force conviction to the minds of all that the districts are not the same and that the courts are separate and distinct tribunals.

There is shown in the Appendix under "C" insert maps showing in colors the old Eastern and Western Districts of Oklahoma and the court towns therein, and the Northern, Eastern and Western Districts of Oklahoma and the court towns therein under the Act of February 16, 1925, and also the new districts super-imposed upon the old districts. These maps will give the court a clear understanding of the change made by the Act of February 16, 1925.

The word "court" as a mental conception, has been defined by this court in the case of *Todd* v. *United States*, 158 U. S. 278, 39 L. ed. 982, as follows:

> "A court is not a judge, nor a judge a court. A judge is a public officer who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power by the proper officer or officers at a time and place appointed by law."

For other authorities on the meaning of "court," see, *In re Steele*, 156 Fed. 853; *United States* v. *Clark*, 25 Fed. Cases 441, case No. 14804; *In re Terrell*, 52 Kan. 29, 39 Am. St. Rep. 327; *State* v. *LaBlonde*, (Ohio) 140 N. E. 510; *Belford* v. *State*, (Ark.) 131 S. W. 953.

It has been held that even in cases where territory has been transferred from one previously existing district to another previously existing district, the identity of the old district and the identity of the old district court must be preserved in order to commence and proceed with the prosecution of crimes and offenses committed before the change. *United States* v. *Hackett*, 29 Fed. 848; *United States* v. *Benson*, 31 Fed. 896.

Prior to August 5, 1886, the State of California constituted one judicial district known as the District of California. On the above date, Congress divided California into two districts, one known as the Southern District of California and the other known as the Northern District of California. The act provided that:

> "All offenses heretofore committed in the District of California, shall be prosecuted, tried and determined in the same manner and to all intents and purposes as if this act had not been passed."

After the Act of Congress took effect, the Government continued to indict and prosecute offenders in the court for the District of California for offenses committed prior to the 5th day of August, 1886. Offenses committed after August 5, 1886, were prosecuted in the court for the Southern District of California, or the court for the Northern District of California, depending upon the district in which the offense was committed, but as to offenses committed prior to August 5, 1886, the court for the old District of California was treated as if in existence and prosecutions had therein, summoning grand and petit juries from the entire territorial body of the old District of California.

In *United States* v. *Hackett*, 29 Fed. 848, the defendant was indicted in the court for the old District of California by a grand jury of that district for an offense committed prior to the 5th day of August, 1886, and the defendant was being prosecuted on said indictment in the court of the old District of California. The court, in that case, speaking through Judge HOFFMAN, held that the old District of California and the court thereof continued to exist after the redistricting act was passed and that offenses committed prior thereto could be prosecuted in the court for the old district, saying:

> "For the purpose of trying offenders who had been indicted or whose offenses had been committed before the passage of the act, it was necessary to keep alive the District Court of the District of California (the same observation applies to the Circuit Court) in order that a court might be organized and be in existence competent to call a jury from the body of the district where the crime was committed."

And,

> "Inasmuch as every offender has a right to be tried by a jury of the district in which the crime was committed, which district shall previously have been ascertained by law, it is plain that a jury of the Northern District could not try an offender who has committed a crime while the district comprised the whole state; neither could a jury of the Southern District try him."

And,

> "The result is that the District Court for the District of California and the Circuit Court for the District may continue to sit and summon jurors from the whole district for the purpose of trying those offend-

ers. We are, therefore, of the opinion that the course adopted, though anomalous and open to some inconvenience, is the only course to be adopted unless we are willing to say that all indictments pending in either court and all offenses committed before the passage of the act, must, the one be discontinued and fail for want of jurisdiction and the other fail because the act secures the impunity of offenders."

In *United States* v. *Benson*, 31 Fed. 896, the same doctrine is laid down in an opinion by Circuit Judge FIELD concurred in by Circuit Judge SAWYER and District Judge HOFFMAN. These two cases are cited and approved by the Circuit Court of Appeals of the Eighth Circuit in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369. The last case is not a former appeal of this case, but was a prosecution of the petitioners for wilfull misapplication of the funds of the Liberty National Bank on an indictment found and returned in the court of the old Eastern District before the Act of February 16, 1925, was passed, and which was pending in that court when the act was approved.

There is no case to be found in the authorities holding that a prosecution can be commenced or proceeded with in the court of a district as it existed after a county in which the offense was committed has been transferred to another district. The only case that even tends in that direction is *United States* v. *Peuschel*, 116 Fed. 642, but an examination of that case discloses that three counties were detached from the Northern District of California, which was a previously existing district, and attached to the Southern District of California, which was also a previ-

ously existing district. *The offense in that case was not committed in the transferred territory* but was committed in the counties of Kern and Tulare, which were a part of the Southern District of California both before and after the transfer of the counties of Inyo, Mariposa and Merced from the Northern District to the Southern District of California. The prosecution in that case was in the court for the Southern District of California and that court had power and jurisdiction to summon jurors from the uttermost limits of the Southern District of California as it existed at the time the offense was committed and the court held that its jurisdiction to try the defendant for an offense committed in Kern and Tulare counties was not affected by the fact that thereafter the counties of Inyo, Mariposa and Merced were transferred to the Southern District from the Northern District.

The court said in the *Peuschel* case:

> "The fact that said provision was not so extended shows conclusively that in the opinion of Congress, the transfer of the three counties from one district to the other could not affect prosecutions for offenses theretofore committed, *except such as were committed in the transferred counties.*"

There is a very marked distinction between a case where the offense was committed in transferred territory and a case where the offense was committed in territory not transferred and there is also a marked distinction between a case where the prosecution is in the court of the district to which the transferred territory has been added and a case where the prosecution is in the court of a dis-

trict from which the transferred territory has been taken. To illustrate, we will draw the distinction with reference to the facts in the *Peuschel* case. There the offense was committed in a county not transferred, but which was in the Southern District of California both before and after the Act of May 29, 1900, was passed. The Southern District of California, after the act was passed, contained all the territory of the old Southern District plus three counties transferred to it from the old Northern District. The court of the Southern District, therefore, after the passage of the act, had jurisdiction over all of the territory in the old Southern District and could summon both grand and petit jurors from any and every part of the territory of the old Southern District. If the offense had been committed in one of the transferred counties, the court of the new Southern District would not have had power or jurisdiction to summon jurors from every part of the district in which the county was situated at the time the offense was committed, nor would the court for the new Northern District of California have jurisdiction to summon jurors from every part of the old Northern District, because three of the counties, including the one in which the offense was committed, would then be outside of the territorial jurisdiction of the court for the new Northern District. It would have been necessary, then, as provided in the Act of May 29, 1900, to preserve the old Northern District and the court thereof for the trial of offenses committed in the transferred territory prior to the change because that would be the only way in which there could be preserved a court organized and with power and jurisdiction to summon

jurors from every part of the old Northern District, and as said in the *Peuschel* case, under such circumstances, prosecutions for offenses committed prior to the change would be affected. They would be controlled by the provision of the act reserving jurisdiction in the court of the old Northern District, and that court would have jurisdiction, if it determined to do so, to summon jurors from any county in the old Northern District.

In the instant case, the offense was committed in Tulsa County, which is within the jurisdiction of the court of the old Eastern District and not within the jurisdiction of the court of the new Eastern District, but is now within the jurisdiction of the court of the Northern District, and jurisdiction to indict and try the petitioners for the offenses charged would inhere in the court of the old Eastern District and the court for the new Eastern District would have no jurisdiction to commence or proceed with the prosecution of the petitioners.

The statements of the Circuit Court of Appeals in the instant case are misleading unless they are considered in the light of the facts to which they are applied. The court held in following the decision of *Lewis* v. *United States*, 14 Fed. (2d) 369, that the original Eastern and Western Districts of Oklahoma were continued for trial and punishment of crimes committed prior to the enactment of the statute creating three new districts in Oklahoma and affirmed the conviction of petitioners, although they were not indicted or tried in the court of the old Eastern District, which was continued for that purpose. It is shown by

the record, and admitted by the Government and the Circuit Court of Appeals in the instant case, that the petitioners were indicted and tried in the court of the newly created Eastern District and the only explanation of this made by the Circuit Court of Appeals in its opinion, is:

> "A practical interpretation of the Act of Congress contemplated the continuance of the Eastern District of Oklahoma, not as a stranger to the former district, but with new boundaries after the analogy of the transfer of a county or counties from districts in other cases."

The Circuit Court of Appeals held that section 59 of the Judicial Code has express application to this case in that it provides for a trial in the district from which counties have been transferred in the same manner as if such counties had not been transferred, etc., unless upon application of the petitioners, the court should order the cause to be removed to the new district for trial, and yet it affirmed the conviction of the petitioners in the face of the fact that the record shows that they were not tried in the district from which counties had been transferred in the same manner as if the act had not been passed, but were tried in the court of a district created several months after the offenses are alleged to have been committed and whose territorial limits never included the County of Tulsa, in which the offenses were committed. The lower court does not discuss the question of the indictment of petitioners, but considers the case from the standpoint of the trial of the petitioners, although the record shows that petitioners

properly raised the question of the court's jurisdiction to indict, from the very inception of the case.

The Circuit Court of Appeals and the District Court in this case have sustained the conviction of the petitioners on the theory that the court of the new Eastern District is the same court as the court of the old Eastern District, and that the new Eastern District is the same as the old Eastern District though they are admittedly separate and distinct districts and tribunals.

Section 2 of article 3 of the Constitution of the United States provides:

> "The trial of all crimes, except in cases of impeachment, shall be by a jury; and such trial shall be held in the state where the said crimes shall have been committed, but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed."

Under this provision, the only restriction as to the place of trial when committed in a state was that the trial should be held within the state. This was not a sufficient protection to the citizen, according to the view of many of the framers of the constitution, nor a sufficient designation of the vicinage from which juries should be drawn to indict and try citizens for crimes committed. It was contended that after a crime was committed, Congress might, for political, or other reasons, change or alter federal judicial districts and thus restrict or extend the vicinage from which grand and petit juries might be drawn for the trial of such offenses and thus endanger the cherished right of

trial by jury, at the place where the crime was committed and before a jury of the immediate vicinage. So, shortly after the adoption of the Constitution, the Sixth Amendment was submitted and adopted. It provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

The language, "which district shall have been previously ascertained by law" means that the district must have been ascertained by law prior to the commission of the offense. *United States* v. *Maxon*, 5 Blatchford 360, 26 Fed. Cases 1220, case No. 15748; *United States* v. *Dawson*, 15 Howard 468, 14 L. ed. 775; *Cook* v. *United States*, 138 U. S. 157, 34 L. ed. 906.

The Circuit Court for the Eastern District of New York in the *Maxon* case, said:

> "The argument in support of the jurisdiction is, that if the district is ascertained by law before the trial, the amendment is sufficiently complied with. We think that this interpretation is not in accordance with the fair import of the terms of the provision; nor would it meet the grievance it was intended to remedy, namely, the formation of a district after the offense was committed, to suit the will or caprice of the law-making power. According to the very words of the amendment, there must be a speedy trial by an impartial jury of the state and district in which the crime was committed, which district (the one in which it was committed), shall have been previously ascertained by law, that is, *previous to the commission of the offense.*"

The decision in that case came on a motion to quash an indictment against John Maxon for grand larceny alleged to have been committed on the 31st day of December, 1883, in the Navy Yards at Brooklyn, New York. At that time, the Navy Yards were in the Southern District of New York. By an Act of February 25, 1885 (13 Statutes 468), the Eastern District of New York was established and such Navy Yard fell within its territorial limits and jurisdiction. The indictment was subsequently found in the District Court for the Eastern District and was transmitted to the Circuit Court for the Eastern District. The Circuit Court sustained the motion to quash and dismissed the indictment.

This court, in *Cook* v. *United States, supra*, had under consideration the effect of the provisions of the Sixth Amendment to the Constitution on the question of venue, where the offense was committed in a territory of the United States, but not within the limits of any state and this court in that case said:

> "In respect to that clause of the Sixth Amendment declaring that the district shall have been previously ascertained by law, it need only be said that if those words import immunity from prosecution where the district is not ascertained by law before the commission of the offense, or that the accused can only be tried in the district in which the offense was committed (the district having been established when the offense was committed), the amendment has reference only to offenses against the United States committed within a state. *United States* v. *Dawson*, 56 U. S., 15 Howard 467, 487, 488 (14:775,783); *Jones* v. *United*

States, 137 U. S. 202, 211, 212 (34:691,695). The second section of Art. 3 has provided, in respect to crimes committed in the states, that the trial by a jury should be had within the state where the crime was committed. The Sixth Amendment added the further guarantee in respect to the place of trial, that the district should have been previously ascertained by law, leaving the trial of offenses not committed within any state to be controlled by the second section of article 3."

This court also said in the *Cook* case, *supra*, in quoting from *United States* v. *Jackalow*, 56 U. S. 485, 17 L. ed. 225:

> "So, in *United States* v. *Jackalow*, 66 U. S., 1 Black 484, 486 (17: 225, 226), 'the crimes committed against the laws of the United States out of the limits of a state are not local, but may be tried at such place as Congress shall designate by law; but are local if committed within the state. They must then be tried in the district in which the offense was committed'."

In *United States* v. *Greene*, 146 Fed. 776, the United States District Court for the Eastern Division of the Southern District of Georgia, in construing the Sixth Amendment, said:

> "The term, 'previously ascertained by law,' necessarily imports previously to the commission of the crime, or at least to the accusation. Now, it will not be disputed that the offense charged against the prisoners, if offense it be, was committed before the creation of the Southwestern Division of the Southern District of Georgia, with provision for court at Valdosta. At that time, the Eastern Division of the district comprehended the counties from which the grand jurors who found the indictments under consideration were drawn. The district, as it then stood was, therefore,

the district as it had been previously ascertained by law. It follows that since a large number of counties have been, subsequently to the alleged commission of the offense, withdrawn from the Eastern District and comprehended in the Southwestern Division, the Eastern Division now at this time is not as it had been previously ascertained by law. It follows that this principle of our organic law, which is over and above all other laws, obliges the court to try the defendants in the district as it stood at the time the offense is alleged to have been committed. The obvious intention of the framers of the constitution was to create a vicinage for the court from which jurors must be drawn. The vicinage was the late Eastern Division of the Southern District of Georgia, but that vicinage had been impaired as we have seen, by an Act of Congress. Acts of Congress cannot impair the constitution or its effect. It follows, therefore, that as to these prisoners, the vicinage in which they are to be tried is the Eastern Division of the Southern District of Georgia, as it had been previously ascertained at the time the offense is alleged to have been committed."

In *United States* v. *Dawson*, *supra*, the defendant was indicted in the Circuit Court of the United States for the District of Arkansas for the murder of one Seaborn Hill, in the Indian country west of the State of Arkansas. After the offense was committed and after the indictment was returned, but before the trial thereof, the State of Arkansas was divided by Congress into two districts, known as the Eastern District and the Western District of Arkansas. The Western District included nine of the western counties of Arkansas and the Indian country lying west of the state. The rest of the State of Arkansas constituted the Eastern

District. The contention was made in that case that the United States Court for the Eastern District of Arkansas had no jurisdiction because the offense was not committed in the Eastern District of Arkansas, but was committed in what, at the time of the trial, was the Western District of Arkansas and at the time of the commission of the offense and the returning of the indictment was the District of Arkansas. There were two opinions in that case, a majority opinion by Justice NELSON and a dissenting opinion by Justice MCLEAN. The court in the majority opinion held that the Sixth Amendment to the Constitution did not apply because the offense was not committed *within the State of Arkansas*, but in the Indian country outside of the State of Arkansas and that the place of trial was ruled by section 2, article 3 of the Constitution, but in discussing the matter, the court said:

> "The argument is that since the erection of the new district out of the nine western counties in the state, together with the Indian country, it is not competent for the Circuit Court, in view of this amendment, to try the prisoners within the remaining portion of the old district, inasmuch as that amendment requires the district within which the offense is committed and the trial is to be had, must be ascertained and fixed previous to the commission of the offense. But it will be seen from the words of this amendment that it applies only to the case of offenses committed within the limits of a state; and whatever might be our conclusion, if this offense had been committed within the State of Arkansas, it is sufficient here to say, so far as it respects the objection, that the offense was committed out of its limits and within the Indian country."

Justice McLean in his dissenting opinion contends even when the offense was committed without the limits of the state, the indictment and trial must be had in the district as it existed at the time the offense was committed. He said:

> "As the state and district are connected by the copulative conjunction in this provision, the case before us is not technically within it. The crime is alleged to have been committed within the Indian country, which the district includes, but it is not within the state, but the case appears to me to be within the policy of the provision. Nine counties of the State of Arkansas are within the district and from which the jury to try the defendant might be summoned. This brings the case substantially within the above provision. *Had the place of the murder been within one of the above counties, the constitutional provision must have governed the case.*"

And,

> "If tried in the Eastern District, the jury must have been summoned from that district and not from the district in which the offense was committed. The considerations in favor of the Western District as the legal place of trial greatly outweigh, it seems to me, any that can arise in favor of the Eastern District."

In the case at bar, there are involved two questions of jurisdiction; *first*, jurisdiction to indict, and *second*, jurisdiction to try. The offenses are alleged to have been committed in Tulsa County in the State of Oklahoma. At the time of the commission, Tulsa County was in the second division of the old Eastern District. At the time the indictment was returned in the court for the new Eastern

District at Muskogee, Tulsa County was not within the territorial boundary of the new Eastern District, but was within the territorial boundary of the Northern District and the situation was the same at the time of the trial in the court of the new Eastern District.

Under these authorities, it seems most clear that the indictment in this case must be found, and the trial had, in the court of the old Eastern District by a grand jury and a petit jury of that district as it was constituted and existed at the time the offenses are alleged to have been committed. *This was not done.* The indictment was returned in the court for the *new Eastern District* at Muskogee on June 23, 1925, by a grand jury drawn and impaneled exclusively from the territorial limits of the new Eastern District and the trial was had at Ardmore, Oklahoma, in the court of the new Eastern District before a jury drawn and impaneled exclusively from the territorial limits of the new Eastern District.

It is conceded by the Government in this case that the court in which the indictment was returned and in which the trial was had, had no power or authority or jurisdiction to summon grand or petit jurors from the ten counties of the old Eastern District (including Tulsa County) which under the Act of February 16, 1925, are included in the Northern District, and the Circuit Court of Appeals for the Eighth Circuit in *Lewis* v. *United States*, 14 Federal (2nd Series) 369, said:

> "If jurors from the counties transferred from the Eastern to the Northern District were to be selected, it would necessitate a writ of *venire facias* to the marshal

> for the Northern District for the marshal of the Eastern District has no power to execute it outside of his own district. There is no statute authorizing jurors to be drawn for service out of the district of their residence."

See, also, *Hale* v. *United States*, 25 Fed. (2d) 430;

If petitioners had been indicted and tried in the court of the old Eastern District as required by the Sixth Amendment to the constitution, section 59 of the Judicial Code and the Act of Congress of February 16, 1925, the court would have had jurisdiction to summon both grand and petit jurors from the utmost limits of the old Eastern District, including the ten counties referred to, and the marshal of the old Eastern District would have had power and authority to summon these jurors from every part of the territorial limits of the old Eastern District. This was specifically held in the case of *United States* v. *Hackett*, 29 Fed. 848, which is cited and approved in *Lewis* v. *United States*, 14 Fed. (2nd Series) 369, wherein the Circuit Court for the Northern District of California said:

> "The result is that the District Court for the District of Cailfornia and the Circuit Court for the District of California may continue to sit and summon jurors from the whole district for the purpose of trying those offenders."

The identity of the old Eastern District and the court thereof could easily have been preserved in all of the proceedings in this case by designating the court and the district as "The United States District Court for the Eastern District of Oklahoma as it existed immediately prior to the

passage of the Act of February 16, 1925," and all process issued out of that court could have been served by the marshal of the old Eastern District in any part of that district, including the ten counties which are not now within the territorial limits of the new Eastern District. Every safeguard of the constitution and the statutes would have been preserved for the petitioners and the Government would not have been inconvenienced or hampered in the least in the prosecution, and both the letter and the spirit of the law would have been respected and fulfilled. As it is, the petitioners have been indicted and tried in the court for the new Eastern District, which had no power or authority or jurisdiction to summon grand or petit jurors from the ten counties in the immediate vicinity of the place where the offenses are alleged to have been committed. They were tried at Ardmore, Oklahoma, in the extreme southern part of the state before a jury drawn, impaneled and selected from the immediate vicinity of Ardmore, some two hundred miles from the place where the offenses were committed.

This court, in *Gut* v. *The State of Minnesota*, 76 U. S. 35, 19 L. ed. 573, in construing a provision of the Constitution of Minnesota which is in the identical language of the Sixth Amendment except that the word "county" is used therein instead of the word "state," said:

> "Undoubtedly, the provision securing to the accused a public trial within the county or district in which the offense is committed is of the highest importance. It prevents the possibility of sending him for trial to a remote district at a distance from friends, among strangers and perhaps parties animated by prejudices of a personal or partisan character."

In this connection, we call the court's attention to the fact that in the verified motion to quash the indictment (R. 83), and in the verified motion to quash the petit jury panel from which the jury was selected to try the petitioners at Ardmore (R. 131), it is alleged that during the last three years preceding, there had been many bank failures, both state and national, in the territorial jurisdiction of the new Eastern District and that a great number of citizens therein had sustained losses either as stockholders or depositors and that because of said bank failures and said losses, there existed in the minds and consciences of many citizens in the counties from which the jury was drawn, a bias and prejudice against officers of banks and other individuals charged with the violation of the banking laws and that the petitioners believed and charged that many of the citizens whose names were in the jury box at the time said grand and petit juries were drawn, had sustained financial losses, either as depositors or stockholders in national or state banks, and that by reason thereof, were biased and prejudiced against any person charged with violation of the national banking law. *These facts were admitted by the Government's demurrer to the motion to quash the petit jury panel, which the court sustained* (R. 131, 134, 135); and we also call the court's attention in this connection to the fact that the *voir dire* examination of the jurors called for service in this case shows that this condition existed and that the petitioners were forced to exercise all of their peremptory challenges to relieve the jury of jurors whose minds were tinged and colored adversely to the petitioners because of these conditions and that the petition-

ers were even then left with certain members of the trial jury who were laboring under the unfavorable influence of these conditions (R. 140 to 210).

It was the possibility, yea, the probability, of such things being done that caused Patrick Henry to say in his speech before the Virginia Convention on the adoption of the Federal Constitution on June 14, 1788, referring to the Constitution before the first ten amendments thereto had been adopted, that:

> "That paper tells you that the trial of crimes shall be by jury and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty; a person accused may be carried from one extremity of the state to another and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the act, but, by a jury unacquainted with both, and who may be biased against him. Is not this sufficient to alarm men? How different is this from the immemorial practice of your British ancestors and your own! I need not tell you that, by the common law, a number of hundreders were required on a jury and that afterwards, it was sufficient if the jury came from the same country. With less than this the people of England have never been satisfied. This paper ought to have declared the common law in force."

It was this objection on the part of Henry and others to section 2 of article 3 of the Constitution which caused the submission and adoption of the Sixth Amendment.

If, under section 59 of the Judicial Code and section 5 of the Act of Congress of February 16, 1925, the old East-

ern District and the court thereof is not preserved as they existed at the time of the commission of the offenses charged, then it would seem that jurisdiction to indict and try the petitioners is vested in the court of the Northern District under section 24 of the Judicial Code as held in *Quinlan* v. *United States*, 22 Fed. (2nd Ser.) 95, in which a petition for writ of *certiorari* was denied by this court on March 5, 1928. The *Quinlan* case construes the Sixth Amendment and section 59 of the Judicial Code on a state of facts identical with those in the instant case. In that case, the accused was indicted in the court for the Middle District of Georgia for an offense committed in Bibb County, Georgia, before the Middle District was created. Prior to May 28, 1926, the State of Georgia was divided into two federal judicial districts known as the Northern and Southern Districts of Georgia. Bibb County was then in the Southern District. On May 28, 1926, Congress divided the state into three new judicial districts, known as the Northern, Middle and Southern Districts. Under this act, Bibb County is in the Middle District.

The offenses charged in the indictment were committed in Bibb County in the early part of the year 1925, at a time when Bibb County was in the Southern District and the indictment was found and returned on the 4th day of April, 1927, in the court for the Middle District, in which Bibb County was at that time located. The Circuit Court of Appeals for the Fifth Circuit in that case held that section 59 of the Judicial Code preserved the old districts in Georgia and the courts thereof for the trial of past offenses in which indictments had been found and returned in the old courts

before the Act of May 28, 1926, was passed, but did not preserve them for the indictment and trial of past offenses in which no indictments had been returned prior to the passage of the act, and based its ruling on the decision of this court in *Salinger* v. *Loisel*, 265 U. S. 224, 68 L. ed. 989, and the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Biggerstaff* v. *United States*, 260 Fed. 926.

The language used in section 5 of the Act of February 16, 1925, preserving the old districts in Oklahoma and the courts thereof, is the same as the language contained in section 59 of the Judicial Code preserving generally to the old districts and their courts, jurisdiction to commence and proceed with prosecutions of crimes committed before the change in the districts. In the Act of February 16, 1925, the language used is: "to commence and proceed with the prosecution of crimes and offenses committed" and in section 59 of the Judicial Code, the language used is: "prosecutions for crimes and offenses shall be commenced and proceeded with." In construing the language used in section 59 of the Judicial Code, the Circuit Court of Appeals for the Fifth Circuit in the *Quinlan* case, said:

> "It appears from the language of that section that, so far as it deals with the situation created by the establishment of a new district, the purpose was to make provision for such criminal and civil cases as, after the creation of the new district, properly could be begun in the District Court for that district. The provision as to civil cases, except as to the manner of transfer, is contained in the second sentence of the section. The language of that sentence unequivocally

shows that the only cases it deals with in the event of the creation of a new district are civil actions pending at the time of the creation of such district. The language of the first sentence, so far as it deals with the matter of creating a new district, is consistent with it referring only to criminal cases pending when such district is created. The word 'prosecution' properly may be used to describe the proceedings after the indictment is found and returned. The connection in which the plural of that word is used in the first sentence of the section under consideration indicates that what was referred to was criminal cases pending at the time of the creation of the new district and then susceptible of being transferred. It has been authoritatively determined that the word 'prosecutions,' as used in section 53 of the Judicial Code (28 U.S.C.A., Par. 114) has the above indicated meaning. *Salinger* v. *Loisel*, 265 U. S. 224, 44 S. Ct. 519, 68 L. ed. 989; *Biggerstaff* v. *United States*, (C. C. A.) 260 F. 926.

"The provision of section 59, as to the transfer of 'such prosecutions and actions' contained in its third sentence, indicates that the criminal cases referred to are those pending when the new district is created, with the result that the file of papers therein and all documents pertaining thereto are, at the time of the creation of the new district, outside thereof and susceptible of being transferred thereto. The enactment of some such provision as the above set out one as to criminal cases was necessary or appropriate as to cases pending when a new district is created, and was unnecessary as to cases thereafter brought. To say the least, it would be questionable whether, in the absence of a statute so providing, a court other than that for the new district would have or retain jurisdiction as to crimes committed in territory included in the new district. The provision was appropriate to

enable such other court to proceed with cases pending in it when the new district was created, and which could not thereafter properly be begun in that court.

"As to criminal cases begun in the District Court for the Middle District of Georgia, the power of that court within the territory of that district was conferred by the provision: 'The District Courts shall have original jurisdiction as follows: * * * *Second.* Of all crimes and offenses cognizable under the authority of the United States.' Judicial Code, Chap. 24, Par. 2 (28 U.S.C.A., Chap. 41 (2)). That power is not restricted to crimes and offenses committed within the territory of the district after it was created. So far as section 59 of the Judicial Code is pertinent in the instant case, it provides as follows: 'Wherever any new district * * * has been or shall be established, * * * prosecutions for crimes and offenses committed within such district * * * shall be commenced and proceeded with the same as if such new district * * * had not been created, * * * unless the court, upon the application of the defendant, shall order the cause to be removed to the new district * * * for trial.'

"The provision for prosecutions being 'commenced and proceeded with the same as if such new district * * * had not been created, * * * unless,' etc., is similar to the provision of section 300 of the Judicial Code (28 U.S.C.A., Chap. 443; Comp. St., Chap. 1277): 'All offenses committed, and all penalties, forfeitures, or liabilties incurred prior to the taking effect hereof, under any law embraced in, amended, or repealed by this act, may be prosecuted and punished, or sued for and recovered, in the District Courts, in the same manner and with the same effect as if this act had not been passed.' That Code (section 289 (Comp. St., Chap. 1266)), abolished the Circuit Courts and conferred their jurisdiction on the District Courts. Sec-

tion 300 referred both to cases brought in the Circuit Courts and cases not begun therein of which those courts had had exclusive jurisdiction. An effect of that provision was to enable the District Courts to proceed with cases pending in the Circuit Courts when the latter were abolished. As to criminal cases pending in the Circuit Courts when they were abolished, or of which those courts had exclusive jurisdiction, the provision of section 300 means that such cases may be dealt with by the District Courts as the Circuit Courts could have dealt with them if those courts had remained in existence and retained their jurisdiction. Section 59 makes provision for criminal cases based on alleged crimes committed in territory detached from the district of the court in which those cases were brought. Section 300 makes provision for cases brought in abolished courts and for cases of which those courts had had exclusive jurisdiction.

"Considering the situations dealt with, it seems clear that in each instance, the requirement that the cases referred to be proceeded with as if the change effected by statute had not occurred was intended to foreclose the questions as to those cases remaining subject to be proceeded with, notwithstanding such change, and as to the court or courts in which they could be carried on to judgment. That the provision of section 59 as to prosecutions being begun and proceeded with as if the new district had not been created meant merely that jurisdiction of those cases was to be retained by the court in which they were begun, and not that the disposition to be made of those cases was to be entirely unaffected by the creation of the new district, is quite manifest, as that section itself provides for the transfer of such cases to the court for the new district, which, of course, could not have been done if that district had not been created. As section 59 deals

with the situation created by transferring part of territory of an existing district to a newly created one, it well may be inferred that the language of the first sentence of that section, similar to that used in section 300, means that, as to criminal cases pending in the court of the old district when the new district is created, based on charges of crimes committed in the transferred territory, those cases may be proceeded with in the court in which they were instituted, the same as if the new district had not been created, though the places where the charged crimes were committed are no longer within the territorial jurisdiction of that court.

"An effect of the provision is to enable the court for the old district to retain jurisdiction of pending criminal cases which properly could not be begun in that court after the creation of the new district. We conclude that that provision does not refer to cases not begun until after a new district was created, and is without effect on the power or jurisdiction of the District Court of the Middle District of Georgia with respect to criminal cases begun therein, whether the crimes charged in those cases were committed before or after the creation of that district."

It necessarily follows, therefore, that if the doctrine in the *Quinlan* case is followed in the instant case, jurisdiction to indict and try the petitioners for the offenses charged rests exclusively in the court for the Northern District of Oklahoma. The *Quinlan* case, however, is in irreconcilable conflict with the instant case and also the case of *Lewis, et al.*, v. *United States*, (C. C. A., 8th Circuit) 14 Fed. (2nd) 369.

Only recently, the United States District Court for the Northern District of Oklahoma, following the decision

of the Circuit Court of Appeals of the Eighth Circuit in the *Lewis* case, discharged, on writ of *habeas corpus*, an accused who had been indicted in the Middle District of Georgia for an offense committed in the Southern District of Georgia before the creation of the Middle District. *Mizell* v. *Beard, U. S. Marshal*, 25 Fed. (2nd Series) 324. Mizell had been arrested in the Northern District of Oklahoma and the Government was seeking to remove him to the Middle District of Georgia for trial. The *Quinlan* case was relied upon by the Government as authority for denial of the writ of *habeas corpus*, but the court refused to follow the authority of the *Quinlan* case, but held that it was bound by the decision of the Circuit Court of Appeals of the Eighth Circuit in the *Lewis* case, which was in conflict with the *Quinlan* case. These conflicting decisions of the courts of two circuits bring about a situation where an accused indicted in a district in a way which the Circuit Court of Appeals in which said district is situated holds is valid and legal, is released under *habeas corpus* because the Circuit Court of Appeals of the circuit in which the writ is heard holds that the indictment is illegal and void. This is a situtation that calls for clarification and final determination by this court.

If the doctrine of *United States* v. *Hackett*, 29 Fed. 848, and *United States* v. *Benson*, 31 Fed. 896, is followed, jurisdiction rests in the court of the old Eastern District, with full power and authority to summon grand and petit jurors from any part of that district that the court might direct.

Section 277 of the Judicial Code provides:

> "Jurors shall be returned from such parts of the district from time to time as the court shall direct so as to be most favorable to an impartial trial and so as not to incur any unnecessary expense or unduly burden the citizens of any part of the district with such service."

It has been held by this court that this provision is constitutional and not in conflict with the Sixth Amendment to the Constitution, *Ruthenburg* v. *United States*, 245 U. S. 280, 62 L. ed. 414, and that the constitutional amendment does not give an accused the right to be tried by a jury representing every locality of the district, but secures to him only the right to a trial by a jury, every member of which is a resident of the territory which comprised the district at the time the offense is alleged to have been committed. *United States* v. *Peuschel*, 116 Fed. 642. *These decisions, however, presuppose that the court in which the prosecution is had has jurisdiction to summon jurors, both grand and petit, from any part of the district.* If it does not have the jurisdiction to do so, it is not the court or district as the same existed at the time the offense was committed.

It was held in *United States* v. *Standard Oil Company*, 170 Fed. 988, that the power of the federal court to direct the selection of a jury under this section should only be exercised when there is reason for it and in *May* v. *United States*, 199 Fed. 53, in which *certiorari* was denied by this court, 229 U. S. 617, 57 L. ed. 1353, it will be presumed in the absence of an order to the contrary that the court has determined that the drawing of jurors from the whole district, is most favorable to an impartial trial.

In the instant case, there was no order of the court directing the drawing of the grand jury that indicted the petitioners or the petit jury that convicted them, from any particular part of the district, although both the grand and the petit jury were in fact drawn exclusively from the territory embraced in the new Eastern District, due to the fact that both the grand and petit juries were drawn from a jury box prepared and provided for the new Eastern District, from which had been excluded all names of persons from the ten counties of the old Eastern District which are now included in the Northern District.

After the organization of the court for the Northern District, the clerk and jury commissioner, in order to prepare and constitute a jury box for the new Eastern District, withdrew from the jury box of the old Eastern District all of the names of the jurors residing in the ten counties of the old Eastern District which, under the Act of February 16, 1925, became a part of the Northern District. This was done without any order of court entered of record, although the Government contends in its brief in the Circuit Court of Appeals (unsupported by the record), that Judge WILLIAMS *verbally* directed the clerk and jury commissioner to do this. If this were true, it could not have the effect of an order of court. An order of court must be entered of record to be valid and all orders not entered of record are extrajudicial and void. 15 Corpus Juris 971; *Charleston Trust Company* v. *Todd*, (West Virginia) 131 S. E. 638; *Medlan* v. *Platte County*, 8 Mo. 235, 40 Am. Dec. 135; *State* v. *Marrionneaux*, 45 So. 389.

Under the SANBORN division order, ratified and approved by Congress in section 5 of the Act of February 16, 1925, the hearing on the motions and demurrers and trial of the case could not be held elsewhere than at Tulsa in the second division of the old Eastern District. *Case* v. *United States*, 14 Fed. (2nd Series) 510. Judge KENNAMER ruled on the motion to quash and dismiss the indictment and the demurrer to the indictment at Muskogee, Oklahoma, outside of the second division of the old Eastern District and the case was tried at Ardmore, Oklahoma, some two hundred miles distant from Tulsa, where the division order jurisdictionally fixed the place of trial, and the Circuit Court of Appeals in this case has approved this procedure by its affirmance of the case.

The Circuit Court of Appeals has held in effect, by its affirmance of this case, that because the petitioners did not move to transfer to the Northern District, they can be indicted and tried over their timely objection in the court of the new Eastern District, which does not have jurisdiction over, or power to summon grand or petit jurors from, the county and vicinity in which the offenses were committed; that by failing to move to transfer from the court of the new Eastern District to the court of the Northern District, petitioners waived their right to insist upon indictment and trial in the court of the old Eastern District and thereby conferred by consent upon the court of the new Eastern District jurisdiction to *indict* and *try* them, although that court did not have jurisdiction under any Act of Congress and could not be invested with such jurisdiction in the face of the Sixth Amendment to the Constitution. *Consent can-*

not give jurisdiction to the courts of the United States. Railway Company v. *Ramsey*, 22 Walling 322-327, 22 L. ed. 823-824; *Exporters* v. *Butterworth-Judson Company*, 258 U. S. 365, 66 L. ed. 663; *Graves* v. *Corbin*, 132 U. S. 571, 33 L. ed. 462; *Wick* v. *United States*, 290 Fed. 191 (Eighth Circuit).

A court cannot function outside of its territorial jurisdiction, *Rosencrans* v. *United States*, 165 U. S. 257, 41 L. ed. 708, and the court of the new Eastern District cannot sit at Tulsa, which is outside of the territorial limits of said district, yet, if the Act of February 16, 1925, had not been passed, the court of the old Eastern District could sit at Tulsa, where the division order of Judge SANBORN jurisdictionally fixed the place of trial of offenses committed in Tulsa County.

The grand jury is inseparably connected with, and a part of, the court in which it functions and its jurisdiction is co-extensive with, and limited by, that of the court in which it is impaneled and for which it is to make inquiry. 28 Corpus Juris, section 88, page 797; *Logan* v. *United States*, 144 U. S. 263, 36 L. ed. 429; *United States* v. *Hill*, 26 Fed. Cases 315, Case No. 15364.

A grand jury is a local tribunal and cannot inquire into offenses committed outside of its jurisdiction. In the case at bar, the grand jury that returned the indictment was impaneled in, and for, the court of the new Eastern District of Oklahoma on June 22, 1925, several months after the passage of the Act of February 16, 1925, took effect, and after the court for the Northern District had been or-

ganized on April 1st, 1925. At the same time it returned an indictment in this case, it returned other indictments for offenses committed in the new Eastern District since its creation, and it is conceded by the Government to have been a grand jury impaneled in and for the new Eastern District as it now exists.

We, therefore, submit that the only theory upon which the Sixth Amendment, section 59 of the Judicial Code and the Act of February 16, 1925, can be harmonized is to hold that the new Eastern District is not the same as the old Eastern District, but has a separate and distinct identity. That the court for the new Eastern District is not the same as the court of the old Eastern District, but has a separate and distinct identity and existence, without the same jurisdiction, without the same judges and without the limitations and restrictions of the division order of Judge Sanborn which was approved and confirmed by Congress as to offenses committed before February 16, 1925; that the court of the old Eastern District and the old Eastern District itself, are preserved and their jurisdiction reserved for the indictment and trial of offenses committed before the passage of the Act of February 16, 1925. That the court for the old district may, and should, continue to sit and exercise its jurisdiction as to past offenses at such places as the old law provided and with full power and complete jurisdiction under the old law, over the territory where these offenses were committed, and with full power and jurisdiction to try the petitioners at Tulsa in the second division of the old Eastern District and with full power and jurisdiction to summon both grand and petit jurors

from any part of the old Eastern District that the court might determine would be most favorable to an impartial trial without incurring any unnecessary expense or unduly burdening the citizens of that part of the district with such service, It would be a paradox to say that under section 277 of the Judicial Code, the court may order the jury drawn from any part of the district and then in the same breath say that the court has no jurisdiction or power to summon jurors from a certain part of that district. Yet, that is the effect of the affirmance of this case by the Circuit Court of Appeals.

Point B.

The first thirty-seven counts of the indictment fail to charge any offenses against the petitioners because the false entries charged are not items of account or made in a book of account of the bank.

The sufficiency of these counts was raised by demurrer, motion for directed verdict at the close of the Government's evidence in chief, and motion for directed verdict at the close of all of the evidence and by motion in arrest of judgment.

"Entry" as used in section 5209 of the Revised Statutes means an item of account and the word "book" as used therein means a book of account. *United States* v. *Crecelius*, 34 Fed. 30; *United States* v. *Morse*, 161 Fed. 429; *United States* v. *Herrig*, 204 Fed. 124. The pertinent part of section 5209 as same now appears is:

"Who makes any false entry in any book, report

or statement of such Federal Reserve Bank or member bank with intent," etc.

Prior to the passage of the Federal Reserve Act this statute had previously existed since 1864 in the following language on this point:

> "Who makes any false entry in any book, report or statement of the association with intent, etc."

There has been no change since 1864 in the language of the statute, "any false entry in any book, report or statement." The only change made by the Federal Reserve Act was to substitute the words "such federal reserve bank or member bank" for the words "the association."

There is no case except the instant one reported in any of the federal reports where anybody was ever prosecuted for making false entries in a minute book of a national bank. This shows a settled construction by the Executive and Judicial Departments of the Government since 1864 that this statute does not cover the making of false minutes in the minute books of a bank.

The comptroller of the currency has compiled and issued a digest of decisions relating to national banks (Public Document No. 2890), which is very exhaustive. It is printed at the Government printing office and distributed free by the Treasury Department and is used extensively by national banks. It was compiled in 1912, and contains an appendix bringing it down to 1920. This book bears the stamp of approval by the Government and by various departments charged with the supervision and administration of the national banking laws and which co-operate with

the Department of Justice in the prosecution of offenses committed thereunder.

On page 428 of this book, the *Morse* case is quoted to the effect that (and in the following language):

> "The word 'entry' as used in Revised Statutes, section 5209, declaring that every officer, clerk or agent of a national banking association who makes any false entry in any of the banks books with intent to injure or defraud the association shall be guilty of a misdemeanor, means an 'item in an account'."

And on page 781, the *Herrig* case is cited to the effect that (and in the following language):

> "The term 'false entries' as used in Revised Statutes, section 5209 (U. S. Comp. St. 1901, p. 3497), making it an offense for an officer of a national banking association to make false entries in reports to the Comptroller of the Currency, means untrue statements of items of account by written words, figures or marks made therein, and was not satisfied by a mere unfilled blank in such report, *viz.*, 'Notes and bills rediscounted, * * *' when in fact the bank had rediscounted $5,000.00 worth of its paper."

This contemporaneous and settled construction for such a long period of time by the departments of the Government charged with the administration and enforcement of the national banking laws, carries great weight with the court in construing section 5209 of the statute with reference to the meaning of the word "entry" and the word "book" therein contained. *United States* v. *Philbrick*, 120 U. S. 52, 30 L. ed. 559; *United States* v. *Hill*, 120 U. S. 169, 30 L. ed. 627; *Pennoyer* v. *McConnaughy*, 140 U. S. 1, 35 L.

ed. 363; *Brown* v. *United States*, 113 U. S. 568, 28 L. ed. 1079; *First National Bank of Anamoose* v. *United States*, 206 Fed. 374; *Baltzell* v. *Mitchell*, 3 Fed. (2nd Ser.) 428.

While the cases of *United States* v. *Crecilius; United States* v. *Herrig*, and *United States* v. *Morse*, *supra*, did not construe the making of false entries in the minute book of a bank, they did construe the meaning of the word "entry" and the word "book" as used in section 5209, where the charge was the making of false entries in an account book of a bank.

Judge HOUGH said, in the *Morse* case:

> "I think 'entry' is used in the statute in its simple and obvious meaning, *viz.*, 'an item in an account'."

Judge THAYER said, in the *Crecilius* case:

> "In section 5209 the word 'entry' is used with reference to books of account, reports and statements. * * * If attention is paid to the purpose which underlies the law under which the indictment is framed, there is ample ground to base an inference that the construction above given is in accordance with the legislative intent. The statute was obviously enacted to prevent bank officials and employees from concealing the actual financial condition of national banking associations by means of a falsification of any of the books of account or statements or reports which they are by law required to make."

Judge BOURQUIN, in the *Herrig* case, said:

> "The statute prohibits making false entries. Neither false reports nor false verifications are within the statute. False entries in reports are untrue statements

of items of account, by written words, figures or marks made therein."

No one in the Department of the Treasury and no one in the Department of Justice and no district attorney in any of the many District Courts of the United States ever conceived the idea at any time since 1864 down to the indictment in this case that section 5209 covered the making of false minutes of directors' meetings, or stockholders' meetings of national banks. It remained to the special assistant attorney general assigned to the prosecution of the petitioners in this case to assert that such acts constituted a violation of section 5209. Such an interpretation did not occur to Judge THAYER in *United States* v. *Crecilius*, or Judge HOUGH in *United States* v. *Morse*, or Judge BOURQUIN in *United States* v. *Herrig*.

Before a man can be punished, his case must be plainly and unmistakably within the statute. *United States* v. *Brewer*, 139 U. S. 278, 35 L. ed. 190; *First National Bank of Anamoose* v. *United States*, 206 Fed. 374; *United States* v. *Herrig*, 204 Fed. 124.

Judge BLATCHFORD said in the *Brewer* case:

> "Laws which create a crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *United States* v. *Sharp*, Pet. C. C., 118. Before a man can be punished, his case must be plainly and unmistakably within the statute."

Point C.

The evidence is wholly insufficient to sustain a conviction of the petitioners under the last three counts of the indictment.

The entries in the reports to the comptroller of the currency were made by certain employees of the bank, without any direction to do so by the petitioners, or either of them. It was the contention of the Government that the petitioners misapplied certain funds of the bank which resulted, in the usual course of bookkeeping, in subordinate employees of the bank innocently making the false entries in the reports to the comptroller of the currency and that the petitioners, though making the misapplication of the funds, caused the making of the false entries in the reports to the comptroller by the other employees.

It is a well settled rule of criminal law in the federal courts that evidence of facts as consistent with innocence as with guilt is insufficient to sustain a conviction and unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial judge to instruct the jury to return a verdict for the accused. *Isbell* v. *United States*, 227 Fed. 788; *Sullivan* v. *United States*, 283 Fed. 865; *Wilkman* v. *United States*, 286 Fed. 852; *Nosowitz* v. *United States*, 282 Fed. 575. It is also true that the mere concealment by the accused from the persons making the entry of the facts necessary to enable the latter to make the correct entry, does not constitute the making of false entries by the accused and that the direction to make the false entry must include some

affirmative act to that effect on the part of the accused. *United States* v. *McClarty*, 191 Fed. 523; *United States* v. *Herrig*, 204 Fed. 124.

It must be remembered that the offense denounced by section 5209 is the making of any false *entry* in any book, statement or report of the bank with intent, etc. The making of a false report to the comptroller of the currency or the making of a false book or statement is not an offense under this section, nor is the false attestation or verification of the report to the comptroller an offense under this section. *Cochran* v. *United States*, 157 U. S. 286, 39 L. ed. 704; *United States* v. *Herrig*, 204 Fed. 124.

It has been settled by this court in *Coffin* v. *United States*, 156 U. S. 432, 39 L. ed. 481, that the making of a false entry is a concrete offense which is not committed when the transaction entered actually took place and so entered exactly as it occurred; that the entry exactly as it occurred of a transaction amounting to a wilfull misapplication, is not a false entry. This doctrine is supported by the following cases: *Cooper* v. *United States*, 13 Fed. (2nd Series) 16; *Twining* v. *United States*, 141 Fed. 41; *United States* v. *Young*, 128 Fed. 111; *Dow* v. *United States*, 82 Fed. 910; *Hyde* v. *United States*, 15 Fed. (2d) 816.

The record shows conclusively that all the entries in the reports to the comptroller of the currency were made by an unidentified stenographer on the direction of C. G. Garrett, who was a vice-president of the bank. It is not contended by the Government that either of the petitioners themselves made any of the entries charged.

The only witnesses as to the alleged false entries in reports to the comptroller were R. C. Lamprich, the cashier; C. G. Garrett, the vice-president, and the petitioner, W. L. Lewis. Mr. Lamprich testified that whenever a call for a report came in from the comptroller he would go to the books of the bank and make up a statement to be published in the newspapers, and Mr. Garrett went to the books of the bank and from them prepared the official report to the comptroller; that the books of the bank contained all of the information necessary to make out the reports as to the total loans and discounts; that neither he nor Mr. Garrett had to go to anybody or anywhere other than the books of the bank to get this information, and that the total of loans and discounts shown in the three reports charged on in the last three counts in the indictment were true and correct, as shown by the books of the bank on the dates shown therein; that in each instance the entry as to loans and discounts was obtained from the books of the bank and was true and correct (R. 298, 299, 372, 378, 379, 592 593).

Mr. Garrett testified that when a call for a report came in from the comptroller he went to the books of the bank and from them made out a report in pencil; that he got all of the information that went into the reports as to loans and discounts from the books of the bank; that he made out in this way the three reports charged on in the last three counts in the indictment; that he would turn over the pencil copy to a stenographer in the bank, who would make out the reports on a typewriter in their final form for transmission to the comptroller; that the total of loans and discounts shown in each of the three reports to the comptroller

included a note of R. A. Koons of $29,500.00, dated September 22, 1922; a note of A. M. Ballard for $21,750.00, dated December 29, 1922, and a note of Mason Kittess for $15,000.00 less the payments endorsed on the back thereof as of the date of the call; that each one of these reports was in exact conformity to the books of the bank as to the item of loans and discounts; that all of the books of the bank were in harmony in these items (R. 378-379).

The petitioner, W. L. Lewis, testified that he did not make any of the entries charged in the reports to the comptroller and did not direct anybody else to make any of them, and, in fact, had nothing whatever to do with the making of the entries therein; that the books of the bank furnished all the information necessary in making out these reports as to the loans and discounts, and that the employee of the bank who actually made out the reports charged on, got all of the information as to loans and discounts from the books of the bank and that they were made out and sent in to the comptroller without any instructions or directions from either of the petitioners (R. 392-393).

Neither Mr. Lamprich nor Mr. Garrett testified that the petitioners, or either of them, made the entries charged, or directed in any way whatsoever that they be so made. It appears conclusively, therefore, that neither of the petitioners actually made the entries or actually directed anybody to make them. But the Government contends that the petitioners caused the making of these entries as to loans and discounts because they received and appropriated to their own use the dividends on the Koons and Ballard stocks, and concealed from the cashier and bookkeeper of

the bank the fact that these payments had been made to apply on the Koons and Ballard notes, and that no entries were made on the books of the bank showing the receipt of these items, or these credits, thereby resulting in course of time in Mr. Garrett innocently making the false entries as to loans and discounts in the reports to the comptroller, in that Mr. Garrett made up the reports from the books of the bank, which were wrong, because no entries had been made showing the payment to the bank of the dividends and their application on the Koons and Ballard notes, and because the petitioners permitted the Kittess note of $15,000.00 to go up on the books of the bank as a discount, when as a matter of fact, it had been made and delivered to the petitioner, W. L. Lewis, as collateral security for the Mitchell note of $13,600.00, and that the concealment from the cashier and the bookkeepers of the bank of the information that the Kittess note was put up as collateral to the Mitchell note and not as an original discount, caused the bookkeepers of the bank to innocently enter the Kittess note on the books as a discount, and thereby in time causing Mr. Garrett in making out the reports to the comptroller from the books of the bank, to make a false entry therein as to loans and discounts by including the Kittess note in the total loans and discounts as taken from the books of the bank. Even though the facts upon which this contention of the Government was based were true, the defendants would not be guilty of making the false entries in the reports to the comptroller. The causation is too indirect, inferential and remote to bring the case within the statute.

Conclusion.

It is unquestionable that the decision of the Circuit Court of Appeals in this case is in irreconcilable conflict with the decision of the Circuit Court of Appeals of the Fifth Circuit in *Quinlan* v. *United States* and that confusion from this conflict has arisen resulting disastrously to the Government in some instances and disastrously to the accused in other instances. This is a situation calling for a decision of this court construing the Sixth Amendment to the Constitution and section 59 of the Judicial Code, which will be binding upon all the inferior federal courts.

We submit that under the statutes and authorities cited, the true and correct construction, and the only one permissible under the language of the constitution and statutes, in the light of the reasons giving rise to them, is that the old districts are preserved and the courts reserved jurisdiction to indict and try for offenses and crimes committed prior to the change or changes made; that the old courts have full power and jurisdiction over every part of the district as it existed at the time the offense was committed and may sit at the times and places provided under the old law in force at the time the offense was committed and may indict and try accused persons as though the changes had not been made; that in the instant case, the petitioners can be indicted only in the court of the old Eastern District and can be tried only at Tulsa in the second division of the old Eastern District in the court of that division. That the court of the new Eastern District of Oklahoma has

no jurisdiction to indict or try the petitioners for the offenses charged; that if it is held that the old Eastern District and the courts thereof, are not preserved for the indictment and trial of petitioners in this case because the indictment was not returned at the time of the change, then the only court that has jurisdiction is the court of the Northern District of Oklahoma; that under no circumstances can it be held that the court of the new Eastern District of Oklahoma has jurisdiction to indict or try.

We submit further that this court should construe the meaning of the words "entry" and "book," as used in section 5209 of the Revised Statutes, and finally settle that the word "entry" means an "item of account" and the word "book" means a "book of account" as held in *United States* v. *Crecilius; United States* v. *Herrig*, and *United States* v. *Morse*, and further that the making of a false entry in a report to the comptroller of the currency is a concrete offense under section 5209 and is not committed by the wilfull misapplication of the funds of a bank, where the entry reports the transaction exactly as it occurred, as held by this court in *Coffin* v. *United States* and *Cochran* v. *United States*, herein cited, and that the evidence in this case is wholly insufficient to sustain the conviction of the petitioners on the last three counts of the indictment.

The petitioners have been indicted and convicted in a court and district that had not been created at the time the offenses charged were committed, and which did not have jurisdiction over the place where the offenses were committed at the time of their commission, at the time of the in-

dictment or at the time of the trial, and have been subjected to severe penalties contrary to the spirit and letter of the law.

We, therefore, submit that the judgment of the Circuit Court of Appeals of the Eighth Circuit and the judgment of the District Court for the new Eastern District of Oklahoma, should be reversed by this court.

Respectfully submitted,

R. L. Davidson,
W. I. Williams,
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Post Office: Tulsa, Oklahoma.

APPENDIX.

Appendix "A."

An Act to amend section 101 of the Judicial Code as amended:

Section 1. The State of Oklahoma is divided into three judicial districts, to be known as the Northern, the Eastern and the Western Districts of Oklahoma. The territory embraced on January 1, 1925, in the Counties of Craig, Creek, Delaware, Mayes, Nowata, Okfuskee, Osage, Ottawa, Pawnee, Rogers, Tulsa and Washington, as they existed on said date, shall constitute the Northern District of Oklahoma. Terms of the United States District Court for the Northern District of Oklahoma shall be held at Tulsa on the first Monday in January, at Vinita on the first Monday in March, at Pawhuska on the first Monday in May, and at Bartlesville on the first Monday in June in each year; *Provided*, that suitable rooms and accommodations for holding court at Pawhuska and Bartlesville are furnished free of expense to the United States. The Eastern District of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnson, Jefferson, Latimer, Le Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah and Wagoner. Terms of the District Court for the Eastern District shall be held at Muskogee on the first Monday in January, at Ada on the first Monday in March, at Okmulgee on the first Monday in April,

at Hugo on the second Monday in May, at South McAlester on the first Monday in June, at Ardmore on the first Monday in October, at Chickasha on the first Monday in November, at Poteau on the first Monday in December in each year, and annually at Pauls Valley at such times as may be fixed by the judge of the Eastern District: *Provided*, that suitable rooms and accommodations for holding said court at Hugo, Poteau, Ada, Okmulgee and Pauls Valley are furnished free of expense to the United States. The Western District of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward. The terms of the District Court for the Western District shall be held at Guthrie on the first Monday in January, at Oklahoma City on the first Monday in March, at Mangum on the first Monday in April, at Enid on the first Monday in June, at Lawton on the first Monday in September, and at Woodward on the first Monday in November in each year: *Provided*, that suitable rooms and accommodations for holding court at Mangum and Woodward are furnished free of expense to the United States. The clerk of the District Court for the Northern District shall keep his office at Tulsa, the clerk of the District Court for the Eastern District shall keep his office at Muskogee and shall maintain an office in charge of a deputy at Ardmore, the clerk for the Western District shall keep his office at Guthrie and shall maintain an office in charge of himself or his deputy at Oklahoma City.

Section 2. The present senior judge of the Eastern District of Oklahoma be, and he is hereby, assigned to hold said court in the said Eastern District, and shall exercise the same jurisdiction and perform the same duties within the said district as he exercised and performed within his district prior to the passage of this Act. That the present judge of the Western District of Oklahoma be, and he is hereby, assigned to hold said court in the Western District of Oklahoma, and shall exercise the same jurisdiction and perform the same duties as he exercised and performed within his district prior to the passage of this Act. That the present junior judge of the Eastern District of Oklahoma be, and he is hereby, assigned to hold said court in the said Northern District, and shall exercise the same jurisdiction and perform the same duties within the said district as he exercised and performed within his district prior to the passage of this Act. Each of said judges and courts shall in other respects have all the power and authority, civil, criminal, equitable or otherwise, which is conferred by law generally upon the District Courts of the United States and the judges thereof.

Section 3. The president, by and with the advice and consent of the senate, shall appoint for said Northern District of Oklahoma a district judge upon the death, disability or retirement of the district judge who is hereby assigned to said Northern District.

Section 4. The president, by and with the advice and consent of the senate, shall appoint for said Northern District of Oklahoma a marshal and a district attorney. A clerk and deputy clerks shall be appointed and may be removed in the manner provided by law.

Section 5. The jurisdiction and authority of the courts and officers of the Western District of Oklahoma, and of the courts and officers of the Eastern District of Oklahoma as heretofore divided between them by the order of the senior judge of the Circuit Court of Appeals for the Eighth Circuit of the United States over the territory embraced within said Northern District of Oklahoma shall continue as heretofore until the organization of the District Court of said Northern District, and thereupon shall cease and determine, save and except insofar as the authority of the junior judge of said Eastern District is continued in him as judge of said Northern District, and save and except as to the authority expressly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District, and save and except as to any other authority expressly reserved to them or any of them under any law applicable in the case of the creation or change of the divisions or districts of District Courts of the United States.

Section 6. Any party to any civil action, suit or proceeding, including proceedings in bankruptcy, which is pending in the said Eastern or Western District and the prescribed venue of which would have been in said Northern District had such district been constituted at the time such action, suit or proceeding was instituted, may, by filing notice of such desire in the office of the clerk of such Eastern or Western District as the case may be, cause such action, suit or proceedings to be transferred to said Northern District, and upon the filing of such notice the cause shall proceed in the said Northern District as though orig-

inally brought therein. The clerk in whose office such notice may be filed shall forthwith transmit all the papers and documents in his court pertaining to such cause to the clerk of said Northern District and he shall also, with all reasonable dispatch, prepare and transmit to such last-named clerk, a certified transcript of the record of all orders, interlocutory decrees or other entries in such cause, with his certificate under the seal of the court that the papers sent are all that were on file in said court belonging to the cause. For the performance of his duties under this section the clerk so transmitting and certifying such papers and records shall receive the same fees as are now allowed by law for similar services to be taxed in the bill of costs and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record in the cause in the court to which the transfer shall be made. With such transcript shall be remitted all deposits in the hands of the clerk to the credit or account of such cause. The clerk receiving such transcript and original papers shall file the same. In case the permissible prescribed venue of any such action, suit or proceeding would, at the option of the plaintiff, have been in either the said Eastern District or in the said Western District, though the said Northern District had then been constituted, then such suit, action, or proceeding shall not be removed to said Northern District except upon consent of all of the parties thereto which consent shall be filed with the clerk in lieu of the notice of transfer above specified and shall have the same effect.

Approved February 16 1925.

Appendix "B."

Division Order of Judge Sanborn of July 23, 1924.

In the United States District Court of the Eastern District of Oklahoma. In the Matter of the Division of Business and the Assignment of Cases for Trial in This District.

Whereas, Honorable R. L. Williams and Honorable F. E. Kennamer, the United States District Judges for this district do not agree upon the division of business and the assignment of cases for trial in this district and have submitted to the undersigned, as the Senior United States Circuit Judge of the Eighth Judicial Circuit, the question of such division:

It is hereby ordered, pursuant to the provisions of section 23 of the Judicial Code, U. S. Compiled Statutes, Compact edition, Sec. 990, that, for the purpose of dividing the judicial business, powers and duties of the judges of this district, the district is divided into two divisions, called the First Divison and the Second Division.

The First Division includes the counties of Nowata, Craig, Ottawa, Mayes and Delaware, the judicial business from which is tributary to this court at Vinita; the counties of Wagoner, Cherokee, Adair, Okmulgee, Muskogee, Sequoyah, McIntosh and Haskell, the judicial business from which is tributary to this court at Muskogee; the counties of Hughes, Pittsburg, Latimer, LeFlore and Atoka, the judicial business from which is tributary to this court at McAlester; and the counties of Choctaw, Pushmataha and McCurtain, the judicial business from which is tributary to this court at Hugo.

The Second Division includes the counties of Washington, Rogers, Creek and Tulsa, the judicial business from which is tributary to this court at Tulsa; the counties of Okfuskee, Seminole, Pontotoc, Coal and Johnson, the judicial business from which is tributary to this court at Ada; the counties of Garvin, Murray, Carter, Love, Marshall and Bryan, the judicial business from which is tributary to this court at Ardmore, and the counties of McLain, Grady, Stephens and Jefferson, the judicial business from which is tributary to this court at Chickasha.

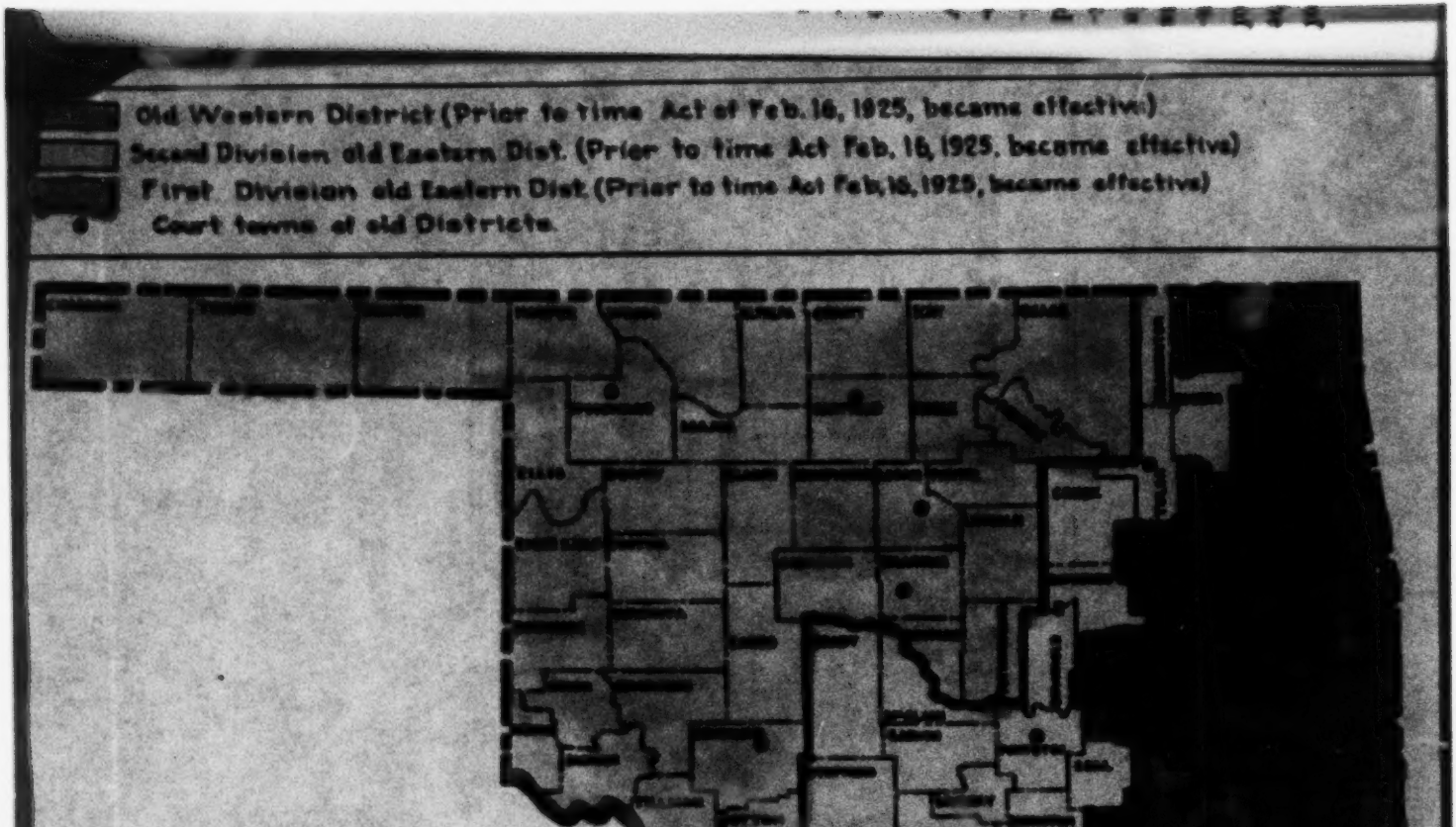
It is further ordered, that all the judicial business of this court, and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decision, and all the judicial business that shall arise in or come from the territory in the First Division on and after the date of this order be, and it is hereby exclusively, assigned to Honorable R. L. WILLIAMS. And, because the offices and records of the United States marshal and the United States district attorney are at Muskogee and it has been the practice to hold the sessions of the grand jury for the entire district at Muskogee, the judicial business for the entire district of convening and presiding over the grand jury and of directing its course, of receiving informations, indictments and pleas of guilty, and pronouncing sentences on pleas of guilty, and of arraigning defendants, taking their pleas and allowing bail before hearing or trial, is assigned to Honorable R. L. WILLIAMS. But the argument of law questions and the trial of criminal cases on motions, demurrers and pleas shall be had in the division in which the offense is charged to have been committed and before the judge to whom the judicial work of that division is generally assigned.

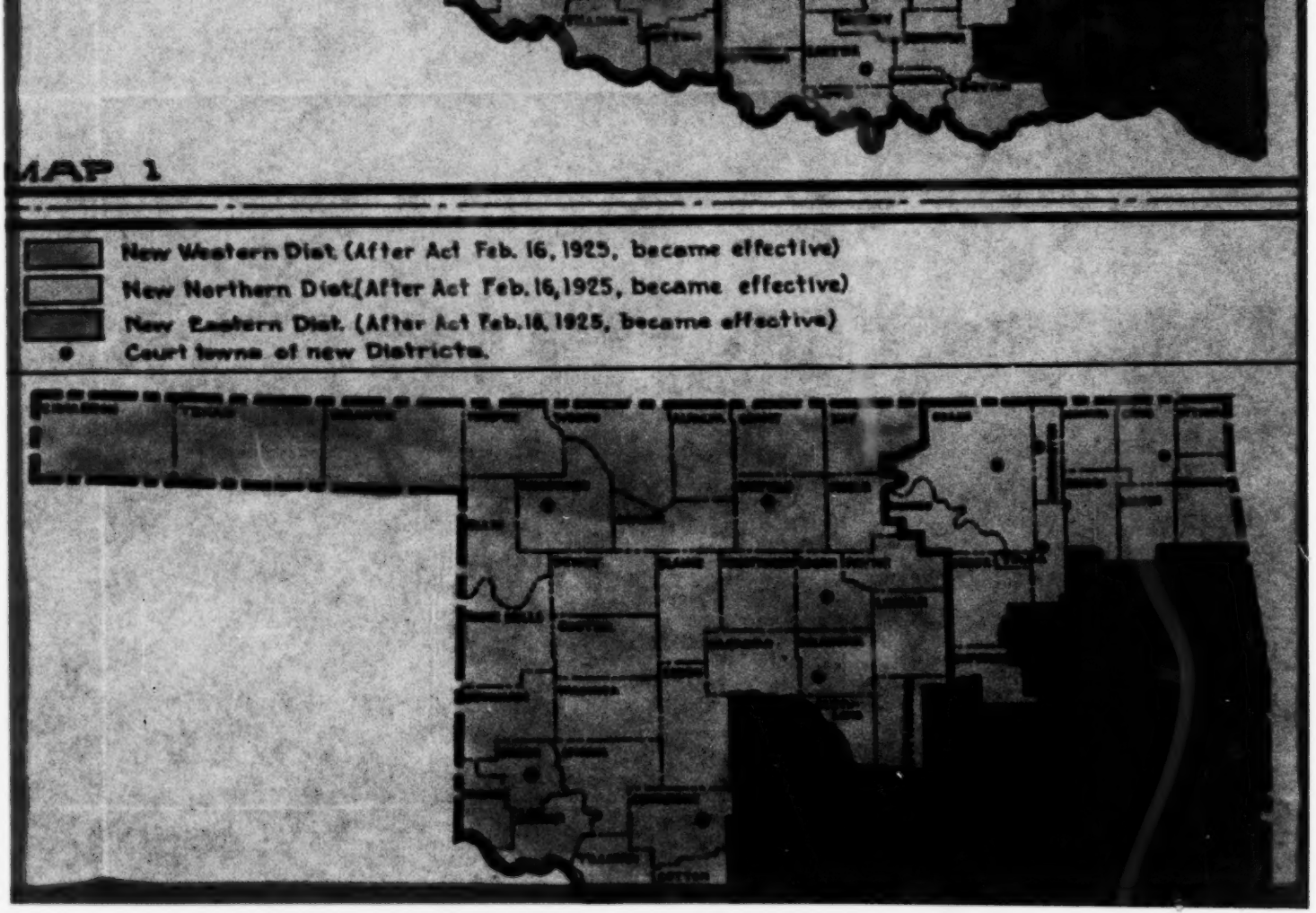
It is further ordered, that, except as to the portion of the judicial business in the Second Division relating to the grand jury, the filing of informations, the arraigning of defendants, the taking of pleas of guilty, pronouncing sentences thereon, etc., assigned to Honorable R. L. WILLIAMS in the preceding paragraph, all the judicial business of this court and of the judges thereof as such, now pending, except as to questions or issues which have been submitted to one of the judges for decisions, and all the judicial business that shall raise or come from the territory in the Second Division on and after the date of this order is hereby exclusively assigned to Honorable F. E. KENNAMER.

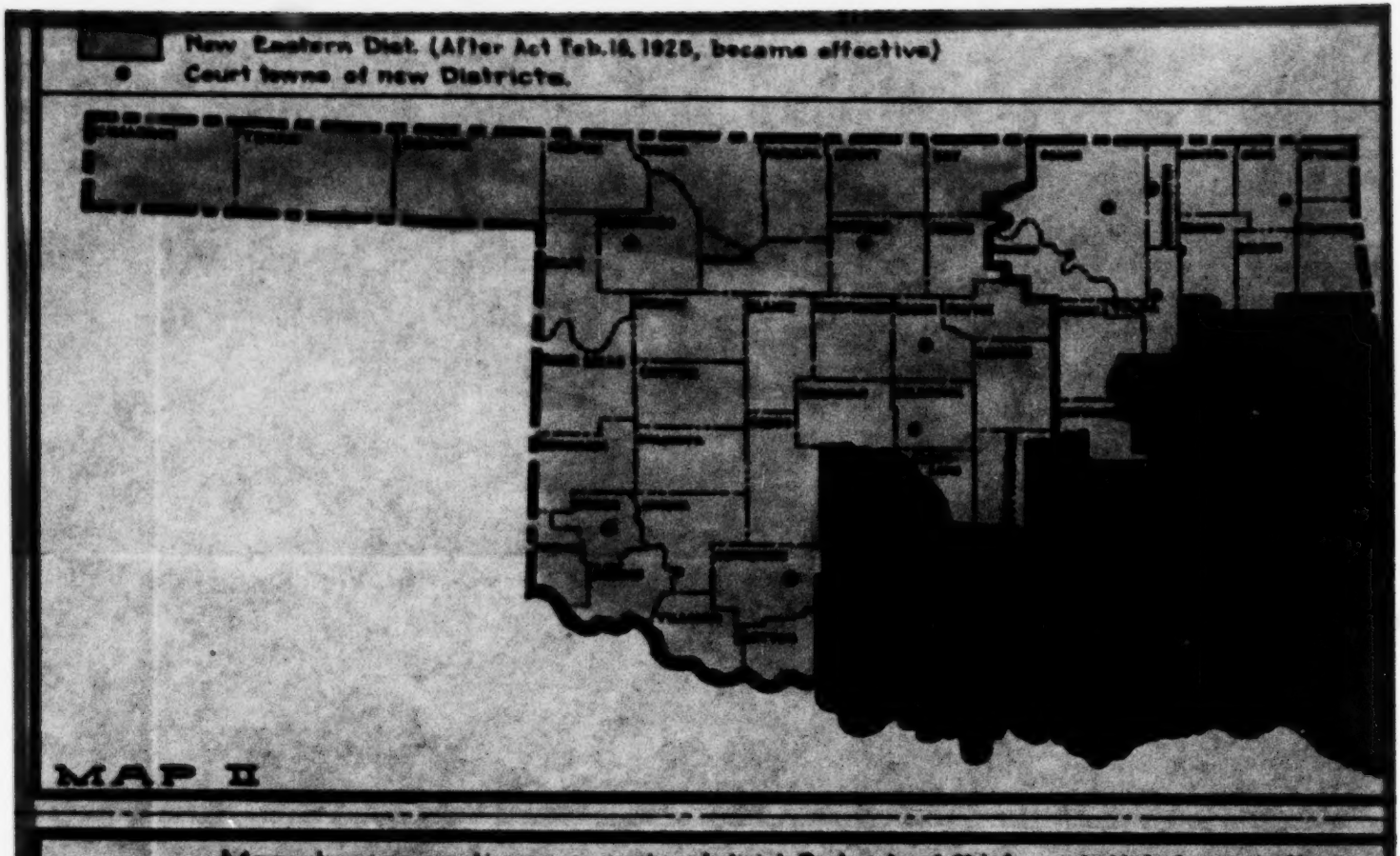
It is further ordered that, unless and until otherwise ordered by the judge to whom the judicial work of the division in which any county is situated, the cases and issues arising in or coming from such county shall be and hereby are assigned for hearing and trial to the court town to which such county is heretofore in this order declared tributary.

WALTER H. SANBORN,
Senior United States Circuit Judge, Eighth Judicial Circuit.

July 23, 1924.


Old Western District (Prior to time Act of Feb. 16, 1925, became effective)
Second Division old Eastern Dist. (Prior to time Act Feb. 16, 1925, became effective)
First Division old Eastern Dist. (Prior to time Act Feb. 16, 1925, became effective)
Court towns of old Districts.


MAP 1
New Western Dist. (After Act Feb. 16, 1925, became effective)
New Northern Dist.(After Act Feb. 16, 1925, became effective)
New Eastern Dist. (After Act Feb. 16, 1925, became effective)
Court towns of new Districts.


New Eastern Dist. (After Act Feb. 18, 1925, became effective)
Court towns of new Districts.
MAP II

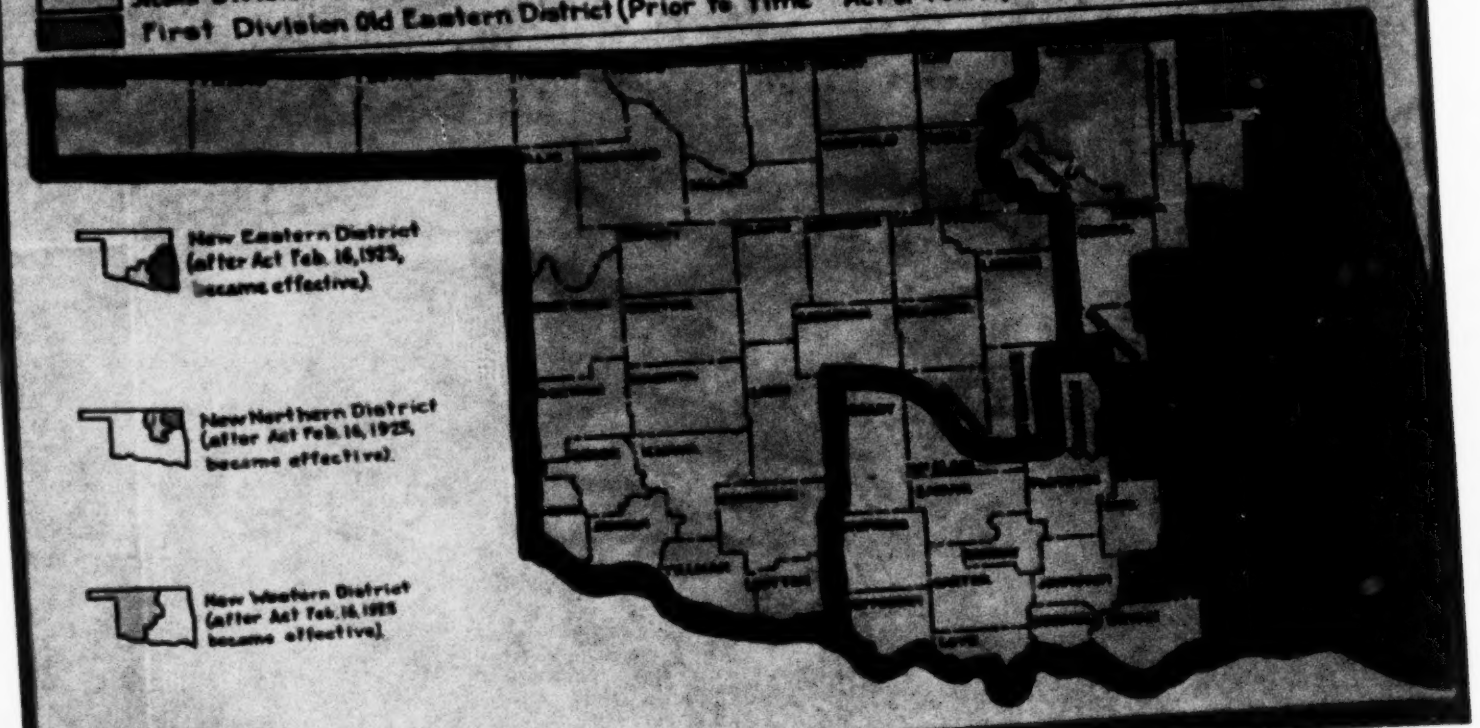
MAP II

Map showing counties comprised in Judicial Districts of Oklahoma both before and after the Act of Feb. 16, 1925, became effective, the New Districts being Superimposed on the old ones.

Old Western District (Prior to time Act of Feb. 16, 1925, became effective)

Second Division Old Eastern District (Prior to time Act of Feb. 16, 1925, became effective)

First Division Old Eastern District (Prior to time Act of Feb. 16, 1925, became effective



New Eastern District (after Act Feb. 16, 1925, became effective).

New Northern District (after Act Feb. 16, 1925, became effective).

New Western District (after Act Feb. 16, 1925 became effective).

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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 182

ALLIE E. LEWIS AND WILLIAM LLOYD LEWIS, petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 900, 983) is reported in 22 F. (2d) 760. It adopts by reference its reasoning in its opinion rendered in another similar case against petitioners, *Lewis* v. *United States*, 14 F. (2d) 369.

JURISDICTION OF THIS COURT

The judgment sought to be reviewed was entered on December 5, 1927. (R. 911.) Petition for rehearing was filed and entertained, but denied on

May 7, 1928. (R. 983.) Petition for certiorari was filed in this Court on June 8, 1928.

The jurisdiction of this Court to issue the writ prayed for is conferred by the Act of February 13, 1925.

QUESTIONS PRESENTED

The petitioners were convicted in 1926 in the District Court for the Eastern District of Oklahoma, under an indictment returned there in June, 1925, of the offense of making false entries in the books of a National Bank, committed in 1923 in Tulsa County, which was in 1923 part of the then Eastern District. Between the date of the offense and the dates of the return of the indictment and of the trial, Congress detached Tulsa County and other territory from the Eastern District and placed it in the new Northern District.

The principal questions presented are whether the District Court for the Eastern District had jurisdiction, after the reorganization of the districts, to try the case, and whether the petitioners' rights under the Sixth Amendment, or under the statutes relating to such situations, were violated because no grand or petit jurymen were drawn from the detached counties.

Other questions raised are whether the minute book of the bank was a book of the bank within the meaning of section 5209 of the Revised States, and whether the evidence was sufficient to sustain the charge.

STATUTES

Section 5 of the Act of February 16, 1925 (c. 233, 43 Stat. 945), creating the Northern District of Oklahoma by withdrawing certain counties from the previously existing Eastern and Western Districts for that purpose, reads as follows:

> SEC. 5. The jurisdiction and authority of the courts and officers of the Western District of Oklahoma, and of the courts and officers of the Eastern District of Oklahoma as heretofore divided between them by the order of the senior judge of the Circuit Court of Appeals for the Eighth Circuit of the United States over the territory embraced within said Northern District of Oklahoma shall continue as heretofore until the organization of the District Court of said Northern District, and thereupon shall cease and determine, save and except in so far as the authority of the junior judge of said Eastern District is continued in him as judge of said Northern District, and save and except as to the authority expressly conferred by law on said courts, judges or officers, or any of them, to commence and proceed with the prosecution of crimes and offenses committed therein prior to the establishment of the said Northern District, and save and except as to any other authority expressly reserved to them or any of them under any law applicable in the case of the creation or change of the divisions or districts of District Courts of the United States.

The whole of the above statute is printed at pages 72 et seq. of petitioners' supporting brief.

Section 59 of the Judicial Code (U. S. C. Title 28, Sec. 121) reads as follows:

> Whenever any new district or division has been, or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred, unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial.

The Sixth Amendment provides, in part, as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, * * *.

The order of the Senior Circuit Judge, dividing the judicial work of the old Eastern District of Oklahoma among its two judges, reads as follows (R. 87-88):

> The Second Division includes the counties of Washington, Rogers, Creek and Tulsa,

> the judicial business from which is tributary to this court at Tulsa; the counties of Okfuskee, Seminole, Pontotoc, Coal and Johnston, the judicial business from which is tributary to this court at Ada; the counties of Garvin, Murray, Carter, Love, Marshall and Bryan, the judicial business from which is tributary to this court at Ardmore; and the counties of McLain, Grady, Stephens and Jefferson, the judicial business from which is tributary to this court at Chickasha.
>
> * * * * *
>
> It is further ordered that, unless and until otherwise ordered by the judge to whom the judicial work of the division in which any county is situated, the cases and issues arising in or coming from such county shall be and hereby are assigned for hearing and trial to the court town to which such county is heretofore in this order declared tributary.

Section 5209, R. S., as amended by the Act of September 26, 1918 (c. 177, 40 Stat. 967, 972; U. S. C. Title 12, Sec. 592), so far as pertinent reads as follows:

> Any officer, director, agent, * * * who makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or

> examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

Petitioners were convicted in the United States District Court for the Eastern District of Oklahoma under an indictment charging in numerous counts various violations of section 5209 R. S., as amended, in that they made false entries in the books and reports of the Liberty National Bank, of which bank they were president and vice president, respectively. (R. 1 and 54.) They were each sentenced to serve five years' imprisonment and to pay a fine of five thousand dollars on count one. Sentences of five years each were also imposed on the remaining counts, but they were directed to run concurrently with the sentence under count one. (R. 65 et seq.)

The indictment (R. 1) charges offenses committed in 1923 at the city of Tulsa, in the County of Tulsa. At that time there were two districts in Oklahoma, the Western District and the Eastern District, and the County of Tulsa was then included in the Eastern District. The indictment was returned June 23, 1925. (R. 50.) Between the date

of the commission of the offense and the date of the return of the indictment the Act of February 16, 1925, was passed, creating the Northern District of Oklahoma, so that at the time of the return of the indictment there were three districts—the Western, the Eastern, and the Northern. The Northern District is made up of counties detached from the Eastern and Western districts. The county of Tulsa, in which this offense was committed, was detached from the Eastern District and placed in the Northern District. The reorganization of the districts became operative by the terms of section 5 of the Act of February 16, 1925, when the Northern District was organized, which occurred on April 1, 1925. (R. 85.) Tulsa had been in the Second Division of the old Eastern District. By the order of the Senior Circuit Judge of July 23, 1924, trial of criminal cases arising in the Second Division were assigned to Judge Kennamer, who was the Junior Judge of the Eastern District. By the terms of section 2 of the Act of February 16, 1925, Judge Kennamer was designated as Judge of the new Northern District, but he was assigned by the Senior Circuit Judge to the trial of this case in the Eastern District, and was disqualified by an affidavit of prejudice, and thereupon Judge Pollock, of Kansas, was assigned to the Eastern District for the trial of this case.

No change was made in the Eastern District or in the organization of the court of the Eastern District by the Act of February 16, 1925, except to de-

tach some counties, including Tulsa County, and to assign the Junior Judge of the old Eastern District to be Judge of the new Northern District. So far as the record discloses, the court of the Eastern District, after the creation of the Northern District, did not differ in its organization from the court of the Eastern District before the organization of the Northern District, except as stated by the assignment of Judge Kennamer to the Northern District, and this difference in the organization was removed in this case by the assignment of Judge Kennamer to the trial of the case. So far as appears, the Clerk and the Marshal and the court attachés and the entire organization of the District Court for the Eastern District was the same after the Act of February 16, 1925, as before.

The indictment was returned in the Eastern District after the organization of the Northern District. On April 7, 1925, after the new Northern District had been created, the list of names in the box from which the grand jurors for the Eastern District were customarily drawn, and which list had been prepared in January, was reduced by the Clerk and the Jury Commissioner by removing from the box the names of men residing in those counties detached from the Eastern District and which had been placed in the Northern District. (R. 93.) The record shows that this was done in order to provide a grand jury qualified to deal with cases arising in the Eastern District as it existed terri-

torially after April 1, 1925 (R. 94); the grand jury which returned this indictment was therefore drawn from the counties remaining in the Eastern District, and none came from the County of Tulsa.

The same situation exists respecting the petit jury which tried the case. They were drawn from a box containing names only of men residing in the counties remaining in the Eastern District after April 1, 1925.

The theory of the petitioners was that since the alleged offense had been committed before the reorganization of districts, the case should be tried and dealt with in all respects by the District Court of the old Eastern District as if the Act of February 16, 1925, had never been passed. With this as a premise, the petitioners objected to the jurisdiction of the court on the ground that the court trying them was the court for the new Eastern District and not the court for the old Eastern District. They also contended that their rights under the Sixth Amendment were violated because the petit jury was not drawn from the district in which the crime had been committed, previously ascertained by law, because no names had been drawn from the counties detached from the Eastern District, including that in which the offense had been committed. They also took exception to the constitution of the grand jury for the same reason.

To raise these points they moved to dismiss the indictment for want of jurisdiction. (R. 70.)

They moved to quash and dismiss the indictment because of want of jurisdiction of the court of the Eastern District as presently constituted and because of the alleged defect in the constitution of the grand jury. (R. 73, 76, 90.) When the case came on for trial in January, 1926, they moved to quash the petit jury panel because of the failure to include men from the counties detached from the old Eastern District, the motion being based on the claimed interpretation of Section 59 and the Sixth Amendment. (R. 128.) These motions were all denied.

The points were raised again in a motion for new trial (R. 834) and in a motion in arrest of judgment (R. 836).

The facts bearing on the alleged insufficiency of the evidence and the application of section 5209 of the Revised Statutes relating to false entries in books of a bank are substantially as stated below.

The record evidence discloses that petitioners owned more than half of the stock of the bank and were in complete control of its affairs. (R. 263, 264, 265.) There was no active board of directors, merely nominal directors whose election was procured by the defendants. (R. 237.) This nominal board held no meetings and kept no track of the affairs of the institution. The defendants obtained for their personal use several hundred thousand dollars (R. 625) of the bank's resources by procuring third parties to execute notes to the bank, the

proceeds of which notes were invariably used by the defendants. Some of these notes were good, others of dubious value and others wholly worthless. The bank became insolvent, was sold to another bank, and the stockholders of the latter bank, who had purchased without a knowledge of the true condition, were assessed approximately six hundred thousand dollars to save their own institution, as the worthless paper so acquired more than absorbed the entire capital of both banks. (R. 627.)

In order to avoid investigation of their loans by the bank examiners they had found it necessary to pretend that the indirect loans to themselves had been examined by a discount committee and approved by the board of directors. (Gov. Ex., R. 689–696.) As they had no discount committee, and no functioning board of directors, they resorted to the practice of writing up pretended minutes of purported meetings of the board, in which they recited pretended reports of a discount committee and the approval of such reports by the board. These minutes were prepared from time to time under the express direction of one of the defendants and were signed by the other defendant as president of the bank. (R. 295.) The name of the nominal secretary of the board was frequently forged thereto. (R. 295.) This course enabled the defendants to deceive (R. 225, 226) the bank examiners and the Comptroller of the Currency as to the true nature of the loans made by the bank,

a false pretense that all such loans were examined and approved by a discount committee and by the full board. The false data which was entered in the minutes was furnished the bank clerk who wrote up said minutes, by one of petitioners, and the other always joined in signing said minutes. (R. 295, 296, 686, 696.)

ARGUMENT

I

THE TRIAL TOOK PLACE IN ACCORDANCE WITH THE PROVISIONS OF THE ACT OF FEBRUARY 16, 1925, AND SECTION 59 OF THE JUDICIAL CODE, PROPERLY CONSTRUED, AND NO RIGHT OF THE PETITIONERS UNDER THE SIXTH AMENDMENT WAS INFRINGED

The proposition underlying the petitioners' contentions is that under the Act of February 16, 1925, and section 59 of the Judicial Code, since the alleged offense had been committed in the old Eastern District prior to the organization of the Northern District the trial should have been conducted by the court of the old Eastern District substantially as if the Act of February 16, 1925, had never been passed, unless, upon application of the defendants, the cause had been removed to the new district. We are in no substantial disagreement with the petitioners about this, and the District Court and the Circuit Court of Appeals for the Eighth Circuit did not disagree with the petitioners on this point.

The Circuit Court of Appeals for the Fifth Circuit, in *Quinlan* v. *United States*, 22 F. (2d) 9

(certiorari denied March 5, 1928), has reached a different conclusion as to the construction of section 59 of the Judicial Code, and has held in a case somewhat like this that the indictment should properly be returned and the case tried in the new district. While there is this conflict in the decisions, the petitioners have not contended that the Circuit Court of Appeals for the Fifth Circuit is right, nor have they based their case on any claim that the indictment should have been returned and the case tried in the new Northern District.

Petitioners' position is disclosed in their motion in arrest of judgment (R. 836), in which they seem to make it clear that they are entitled to a trial in the Eastern District as it geographically existed at the time of the commission of the offense, and to have the grand and petit jurors drawn from the whole district, and not merely from the thirty counties left in the District by the statute creating the new Northern District, *supra*. Their exact position is made even clearer by the following excerpts from the record (R. 89, 91, 138, 139):

> * * * said cause came on for hearing on motion of the defendants to dismiss the indictment because the court has no jurisdiction.
>
> Mr. Davidson. I take it that it may be conceded that on the hearing on this motion, as on the other, that the court for the Eastern [meaning Northern] District of Oklahoma was organized on the 1st day of April, 1925.

The COURT. The same admissions may be considered. You don't intend to transfer this case to the Northern District?

Mr. DAVIDSON. We haven't moved to transfer to the Northern District.

The COURT. It is not the purpose of this motion to claim your right to try the case in the Northern District?

Mr. DAVIDSON. So far as go in this motion we object to being tried in the Eastern District as it now exists.

The COURT. I want to go further with you. It isn't your purpose to claim your right to try the case in the Northern District?

Mr. DAVIDSON. No, but it is our purpose to claim our right to be tried, if anywhere, in the Old Eastern District at the time the crime was committed. We don't think the Eastern District as it now exists, or the Northern District as it now exists, has jurisdiction to try this case, but if any district has jurisdiction it is the old Eastern District in its exact condition at the time the offense was committed.

* * * * *

Mr. DAVIDSON. I would like to know, and I would like to have this go in the record, whether or not we are being put upon trial in the Eastern District of Oklahoma as it exists under this Act of February 16, 1925, or in the Eastern District of Oklahoma as it existed prior to the passage of the Act of February 16, 1925?

The COURT. Well, as I said, I don't conceive of any difference in the District Court of the Eastern District of Oklahoma prior to the passage of the act creating the Northern District, and the District Court of the Eastern District of Oklahoma subsequent to the passage of the act other than ten counties have been detached from the Eastern District, but the court as a court is the same court and the same jurisdiction and powers that it had prior to the passage of the act creating the Northern District with the exception that its territorial limits or territorial jurisdiction have been limited to the extent of the ten counties detached.

Mr. DAVIDSON. Then I would like to ask this, your honor: Are we being tried in the Eastern District in its restricted territorial jurisdiction?

The COURT. I am not passing on that question now; as to their right to a jury and where it comes from. I am simply holding this case is properly triable in the Eastern District under the Judicial Code. Now you have argued, Mr. Davidson, a question that goes to the right of selecting a jury, what kind of a jury they are to be tried before. I say I am not passing on that question at this time. I simply hold the District Court of the Eastern District has a right to try this case under the Judicial Code.

Mr. DAVIDSON. Well, we desire to except to the court's interpretation of the Act of February 16, 1925, as to the identity of the

court as it now exists and as it existed prior to the passage of that act.

* * * * *

The COURT. Let me just see; this offense is alleged to have been committed in the Eastern District of Oklahoma.

Mr. DAVIDSON. Prior to the time that the act was passed.

The COURT. So it must be tried in the Eastern District.

Mr. DAVIDSON. That is true.

The COURT. The jury must be drawn from the Eastern District.

Mr. DAVIDSON. Yes, sir.

The COURT. This is the Eastern District.

Mr. DAVIDSON. It is not the Eastern District that existed at the time this offense was committed.

The COURT. But this is the Eastern District.

Mr. DAVIDSON. In name it is, but not in territorial integrity.

The COURT. The only thing you have to complain of anything at all is that the jurors do not come from all of the counties constituting the Eastern District——

Mr. DAVIDSON. That the jury box from which it is drawn was illegally filled and is not a jury box for the old Eastern District of Oklahoma.

The COURT. Well, anyhow, the jurors that are here are probably from the Eastern District of Oklahoma.

Mr. DAVIDSON. As it now exists.

The COURT. Yes, sir.

Mr. DAVIDSON. Yes, sir.

The COURT. Do you think you are entitled to anything more?

Mr. DAVIDSON. Yes, if your honor please, we are entitled, under the Sixth Amendment to the Constitution of the United States to be tried by a fair and impartial jury.

The COURT. Yes.

Mr. DAVIDSON. Of the district as it existed at the time the offense was committed.

The COURT. Yes.

Mr. DAVIDSON. Which had been previously ascertained by law.

The COURT. Now, this is a jury from the district in which the offense is alleged to have been committed.

Mr. DAVIDSON. It is a jury for a part of that district.

So far as the construction of section 59 of the Judicial Code is concerned, we think the trial took place in exact accordance with it and with the provisions of the Act of February 16, 1925. Petitioners make an elaborate argument that the court that tried them was the court for the new Eastern District and not the court for the old Eastern District, but they fail to point out in what respect the organizations of these courts differ. In this respect petitioners' requirements would have been satisfied if the court had entitled itself "The United States District Court for the old Eastern District of Oklahoma." Petitioners do not point out wherein the court organization would have differed if they had

been tried by what they consider to be the District Court for the old Eastern District.

Under the order of the Senior Circuit Judge, in force prior to the organization of the new district, this case would normally have been tried at Tulsa, which was a court town in the Second Division where the offense was committed, but that divisional order, in its last paragraph, permitted the judge to whom the judicial work of the division was assigned to direct that a case might be tried in some other court town in the district, and section 5 of the Act of February 16, 1925, creating the new Northern District of Oklahoma, properly construed, seems to modify the divisional order as applied to trial of offenses committed before the new district was organized to the extent of allowing trial in a court town other than that in which the trial might have occurred if the new district had not been created.

So far as drawing the petit jury is concerned, petitioners were not entitled under the Sixth Amendment, or under any statute, to have the jurors drawn from every part of the original Eastern District. Congress as early as the Judiciary Act of 1789, now incorporated in section 277 of the Judicial Code, specifically authorized trial courts to draw jurors from less than the entire district. This was done not only to insure an impartial trial, but to cut down unnecessary expense, and also not to unduly burden citizens to go such distances for jury duty.

In *Ruthenberg* v. *United States*, 245 U. S. 480, 482, the Court said:

> It is contended that plaintiffs in error were not tried by a jury of the State and district in which the crime was committed, in violation of the Sixth Amendment, because the jurors were drawn not from the entire district but only from one division thereof. The proposition disregards the plain text of the Sixth Amendment, the contemporary construction placed upon it by the Judiciary Act of 1789 (c. 20, 1 Stat. 73, 88, section 29), expressly authorizing the drawing of a jury from a part of the district, and the continuous legislative and judicial practice from the beginning. Section 802, Rev. Stats.; section 277, Judicial Code. *Agnew* v. *United States*, 165 U. S. 36, 43; *United States* v. *Wan Lee*, 44 Fed. Rep. 707; *United States* v. *Ayres*, 46 Fed. Rep. 651; *United States* v. *Peuschel*, 116 Fed. Rep. 642, 646; *Clement* v. *United States*, 149 Fed. Rep. 305; *Spencer* v. *United States*, 169 Fed. Rep. 562, 565, 566; *United State* v. *Merchants' &c. Co.*, 187 Fed. Rep. 355, 359, 362.

The act of the court in drawing the jurors only from those counties remaining in the Eastern District did not in and of itself violate the Sixth Amendment or any statutory provision. It was an entirely proper thing to do, since, if grand and petit jury men had been drawn from the detached counties, there would have been two grand juries and two petit juries to deal with, one set of jurors to

consider offenses committed in the detached counties before the organization of the new district, and the other set of jurors to consider cases arising after April 1, 1925, in the territory then constituting the Eastern District. Such a confusion and resulting expense was properly avoided. There is only one point in this connection made by the petitioners which deserves consideration.

In referring to the case of *Ruthenberg* v. *United States, supra,* and other cases to the same effect, including *United States* v. *Peuschel,* 116 Fed. 642; *United States* v. *Hackett,* 29 Fed. 848; *United States* v. *Benson,* 31 Fed. 896; and *United States* v. *Standard Oil Co.,* 170 Fed. 988, the petitioners say that the decisions holding that the drawing of a jury from less than the entire district violates no right of the accused "presuppose that the court in which the prosecution is had has jurisdiction to summon jurors, both grand and petit, from any part of the district." Their argument, as we understand it, is that the provision of the Sixth Amendment is not violated if the court has power to draw jurymen from any part of the previously ascertained district in which the crime was committed, but in the exercise of its discretion, for cause, draws the jury from a part of the district, but that the constitutional provision is violated if Congress by statute attempts to prohibit the court absolutely from drawing juries in cases like this from a part of what was the district, ascertained by law, at the time of the commission of the offense.

There may be a substantial constitutional question presented if this is the proper construction of section 59 of the Judicial Code and of the Act of February 16, 1925.

There is some force in the argument that as Congress may not provide for drawing jurymen from territory not included in the district established at the time of the commencement of the offense it may not lop off territory from the previously ascertained district and prevent the drawing of jurymen from it. It is possible that a jury may be packed by act of Congress in one way as well as in the other, and to so construe the statute in the present case would deprive the court of the power to draw jurymen from the very county in which the offense was committed. If, however, there is any substantial constitutional question here, it readily may be avoided by construction of the statutes.

The Circuit Court of Appeals for the Eighth Circuit in *Lewis* v. *United States*, 14 F. (2d), 369, 371, made a statement, apparently not necessary to the decision of the case, as follows:

> If jurors from the counties transferred from the Eastern to the Northern district were to be selected, it would necessitate a writ of venire facias to the marshal for the Northern district, for the marshal of the Eastern district has no power to execute it outside of his own district. There is no statute authorizing jurors to be drawn for service out of the district of their residence.

We doubt if this statement is sound.

If necessary to avoid a serious constitutional question, the Act of February 16, 1925, creating the new Northern District of Oklahoma, and section 59 of the Judicial Code should be construed to allow the court for the Eastern District, in dealing with cases arising in the detached counties before the reorganization to summon jurors from the detached counties as well as from the counties remaining in the district and to authorize the marshal of the Eastern District to exercise the same powers within the detached counties respecting such cases as he could have exercised prior to the reorganization. Such a construction of the statutes is reasonable, and it removes any difficulty raised by the argument that the Act of Congress prohibited the drawing of jurymen from the detached counties in which the offense had been committed.

There is a conflict between the views of the Circuit Court of Appeals for the Eighth Circuit and the Circuit Court of Appeals for the Fifth Circuit respecting the construction of section 59 of the Judicial Code.

In *Quinlan* v. *United States, supra*, the Fifth Circuit held, in circumstances similar to those in the case at bar (p. 98):

> That the provision of section 59 as to prosecutions being begun and proceeded with as if the new district had not been created meant merely that jurisdiction of those cases was to be retained by the court in which they were begun, and not that the

disposition to be made of those cases was to be entirely unaffected by the creation of the new district, is quite manifest, as that section itself provides for the transfer of such cases to the court for the new district, which, of course, could not have been done if that district had not been created. As section 59 deals with the situation created by transferring part of the territory of an existing district to a newly created one, it well may be inferred that the language of the first sentence of that section, similar to that used in section 300, means that, as to criminal cases pending in the court of the old district when the new district is created, based on charges of crimes committed in the transferred territory, those cases may be proceeded with in the court in which they were instituted, the same as if the new district had not been created, though the places where the charged crimes were committed are no longer within the territorial jurisdiction of that court.

An effect of the provision is to enable the court for the old district to retain jurisdiction of pending criminal cases which properly could not be begun in that court after the creation of the new district. We conclude that that provision does not refer to cases not begun until after a new district was created, and is without effect on the power or jurisdiction of the District Court of the Middle District of Georgia with respect to criminal cases begun therein, whether the crimes charged in those cases were committed before or after the creation of that district.

As section 59 states that prosecutions for crimes committed before the new district was created shall be *commenced* and proceeded with as if the new district had not been created or the territory transferred, it seems to cover cases where prosecutions were not pending as well as where prosecutions had been commenced. The court for the Fifth Circuit deals with this by saying that an indictment is not a prosecution and returning an indictment is not commencing a prosecution, and therefore the statute relates to cases where indictments were pending in the old Southern District of Georgia before the new district was organized, but the " prosecution " had not commenced. We think the construction of section 59 adopted by the Court of Appeals for the Fifth Circuit would raise serious constitutional difficulties in throwing the trial of the case into a new district, some part of which may not have been in the old district in which the crime had been committed, and the interpretation of the statute by the Circuit Court of Appeals for the Eighth Circuit seems more reasonable, and it is a construction which the United States is prepared to support.

It would be desirable to remove this conflict by a decision of this Court. Since the petitioners did not rely on the construction of section 59 adopted by the Court of Appeals for the Fifth Circuit, it may be that the conflict can not be resolved in this case, but in a discussion of the contention of the petitioners it seems likely that this Court would

find it necessary in the course of its reasoning to adopt one or the other construction of section 59 and the other pertinent statutes, and in this way clarify the situation resulting from this conflict of decision. In the hope that some such result may follow, we are not disposed to oppose the petition for certiorari.

In the *Quinlan case* it was pointed out in the brief for the United States in this Court on the petition for certiorari that no question as to the jurisdiction of the court, or as to the constitution of the jury under the Sixth Amendment was raised by the accused until after verdict. It was also pointed out that under section 59 the accused had a right to have the cause transferred to the new district, and having consented to be tried in the new district without objection until after verdict the situation was as if the transfer had taken place. It was also pointed out that the record did not disclose from what counties the jury came, and no objection had been made in drawing the jury to the inclusion of those not residing in what had been the old district in which the offense had been committed. We account for the denial of the petition for certiorari in the *Quinlan case* by the state of the record thus disclosed.

In the present case the petitioners made timely objections of various kinds to raise their points, and although we are satisfied the decision of the court below is sound and the conviction must be sus-

tained, this Court may feel, in the exercise of its sound discretion, that the case justifies a writ of certiorari.

II

THE MINUTE BOOK IN WHICH FALSE ENTRIES WERE MADE, WAS A "BOOK" OF THE BANK WITHIN THE MEANING OF THE STATUTE VIOLATED

It appears to be the contention of the petitioners that in order to violate section 5209, R. S., as amended, *supra*, it is necessary to make false entries in a book of account of the bank, and that the minute book is not such a book.

Little needs to be added to the following excerpts from the opinion of the Circuit Court of Appeals below in disposing of the point (R. 907–908):

> The objection to the sufficiency of the evidence is twofold. First, that minute books are not books as contemplated by the statute; and, second, that the reports to the Comptroller of the Currency were not made by the defendants. We think the statute broadly covers all books, entries in which are calculated to deceive the Comptroller of the Currency and the officers of the bank. These minute books were most important under the circumstances of this case. Had they not disclosed that these loans, amounting to hundreds of thousands of dollars, had been passed on by the proper committee of the directors, those loans conceivably would have been investigated and challenged. The result

> was that the funds of the bank were misappropriated by plaintiffs in error through the instrumentality of deceptive entries in books of the bank. It is true that in a number of cases cited it has been taken for granted that the entries referred to in the statute are entries in books of account, strictly so called. Such, of course, are the usual entries that come before the courts, but no decision has either expressly, or by necessary implication, confined the application of the statute to such books of account. The word "entry," by common usage, is not so limited. Any notation in a book of the bank, calculated and intended to give information concerning matters affecting its financial integrity and the soundness of its business methods, must come within the scope of the comprehensive language employed in the statute.

The National Banking Laws do not undertake to prescribe what books a bank shall keep. The statute forbids the making of any false entry "in any book" of the bank, and there is no rule of construction, technical or otherwise, which would exclude from the reach of the statute a book of the bank in which operations of the bank were recorded, which petitioners so effectively used to cover up their nefarious transactions, and thus prevent a disclosure of the bank's real condition.

III

THE RECORD AMPLY SUPPORTS THE CHARGE THAT PETITIONERS MADE FALSE ENTRIES IN REPORTS TO THE COMPTROLLER OF THE CURRENCY

Inasmuch as the sentence imposed upon petitioners is supported by the counts of the indictment charging false entries in the minute book of the bank, it seems only necessary to quote the language used by the Circuit Court of Appeals below in disposing of the point (R. 908):

> As to the reports made to the Comptroller it is sufficiently shown that they were sent and caused to be sent by the defendants, and with their knowledge, whether by explicit direction in each case is immaterial. *Morse* v. *United States* (C. C. A. 2), 174 Fed. 539. As to the responsibility of officers having control and management see opinion of this court in *Cooper* v. *United States*, 9 Fed. (2), 216–222.

Inasmuch as petitioners were president and vice president of their bank (R. 2), they can scarcely escape criminal liability on the ground that they gave no directions to the employees of the bank to make false entries in reports to the Comptroller of the Currency. *United States* v. *Kenofsky*, 243 U. S. 440, and *Dunlop* v. *United States*, 165 U. S. 486, 497–498.

CONCLUSION

The points raised by the petitioners that the minute book is not a book of the bank within the meaning of section 5209 R. S., and as to the sufficiency

of the evidence are not substantial enough to justify the granting of the petition. In so far as the petition asks for review of the judgment on questions of jurisdiction arising because of the reorganization of the Districts, and on questions arising under the Sixth Amendment as to the constitution of the jury, the United States does not oppose the petition.

Respectfully submitted.

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